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No. 40] NEW DELHI, TUESDAY, FEBRUARY 17, 1953

ELECTION COMMISSION, INDIA
NOTIFICATIONS

New Delhi, the 17th February 1953

S.R.O. 355.—WHEREAS the election of Shri Mehrabali Lasker of Niairgram Village, Sonabarighat P.O., Cachar District as a member of the Assam Legislative Assembly from the Silchar constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), jointly by Shrimati Jyotsna Chanda of Silchar Town, and Shri Priyanath Deb of Silchar Town, Assam;

AND WHEREAS the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

ELECTION PETITION No. 42 of 1952

PRESENT:

Shri A. Das Retd. District Judge. (W. Bengal)—*Chairman.*

Shri Umakanta Gohain, Retd. Addl. Judge, (Assam) and

Shri U. N. Bezbaruah, Bar-at-Law—*Members.*

ELECTION TRIBUNAL, ASSAM, AT GAUHATI ON 1ST FEBRUARY 1953

In the matter of an Election-Petition under Section 81 of the Representation of the People Act, 1951;

AND

In the matter of an election to the Legislative Assembly, Assam, from the Silchar Constituency, in the District of Cachar, held on 5th January 1952;

AND

In the matter of:—

1. Jyotsna Chanda,
2. Priyanath Deb—*Petitioners.*

Versus

1. Mehrabali Lasker,
2. Achintya Bhattacharjee,
3. Biresh Chandra Acharjee,

4. Dilip Kumar Chakravarty,
5. Satindra Mohan Deb,
6. Jalaluddin Barlaskar, and
7. Sukhamoy Singh—*Respondents*.

Petitioners, represented by Shri S. Sen, Bar-at-Law, assisted by Shri J. N. Bhattacharjee, Advocate, Shri S. B. Ray, Pleader & others.

Respondent No. 1, represented by Shri B. C. Baruah, Advocate, Assam High Court & Shri Upendra Sankar Datta, Advocate.

JUDGMENT

The election-petition is presented by Sreejukta Jyostna Chanda, a defeated candidate, her election-agent Shri Priyanath Deb who is also a voter of the Constituency, joining with her in the petition. The petitioner No. 1 and the seven respondents were the duly nominated candidates in the case, all of whom contested the Election till the end. Respondent No. 1, Shri Mehrabali was declared to have been the successful candidate, having, as declared, polled 4232 of the valid votes, the next highest poll having been secured by the petitioner No. 1, her total being only 46 less. The poll of the Constituency was held on 5th January 1952 and the counting commenced on the very next day, that is, on 6th January 1952 and the result, declared on 7th January 1952.

The grounds on which the petitioners have challenged the election are shortly stated:—that there were some instances of non-compliance with the provisions of the R. P. Act, 1951, and of the Rules made thereunder, by the Returning Officer; that there were cases of false personation, which again were made at the instance of respondent No. 1, or with his connivance; that there was undue influence exercised by the respondent or with his connivance, by extensively appealing to the Muslim voters that the Quoran prohibits election of a woman to a public body like a Legislative Assembly, and by further exhorting that a Muslim, voting for a woman-candidate, would be an object of divine displeasure or spiritual censure.

The prayers made by the petitioners were, first, that the election of Mehrabali Lesker be declared void and the petitioner No. 1 be declared as duly elected, and, in the alternative, that simply the election of the returned candidate be declared void.

The following issues were settled for trial of the case:—

Issues—

1. Whether some voters who are residents of different wards of Silchar Municipality, were prevented from casting votes, due to the polling areas in which they resided not having been included in any polling station, as published under Section 25 of R P Act, 1951? If so, what is the number of voters so prevented from casting votes?

2. Were the printed rolls of these voters sent to the Presiding Officer of a wrong polling station, to wit, polling station No. 38(a) of the Constituency?

3. Is it a fact that the Presiding Officers of the polling Stations of the Constituency, mentioned in para (1) of the petitioner's statement, dated 15th November 1952, did not submit account of the ballot-papers in form No. 10 as alleged in Sch. A(II) of the election-petition?

4. Did the Returning Officer fail to comply with the provisions of Rule 37, to make proper arrangement for casting of votes by persons employed at polling stations, as alleged in Sch. A(III) and (IV) of the election-petition, to wit, those named in para (2) of the supplementary statement of the petitioner, dated 15th November 1952?

5. Did the irregularities indicated in the above issues Nos. 1 to 4 or any of them, materially affect the result of the election?

6. Are allegations of personation, as set out in Schedules B & C of the election-petition, true?

7. If so, were these instances of personation or any of them, procured by the respondent No. 1, his agents or other persons with his connivance, as alleged in Schedule D of the election-petition?

8. Did the respondent No. 1 by himself, his agents or other persons with the connivance of either, appeal to the voters and to the Muslim voters in particular, that the petitioner No. 1 being a woman could not according to Quoranic injunctions be elected as a representative in the Legislative Assembly, and, further, that anybody voting in her favour will be an object of divine displeasure or spiritual censure? Were the appeals, as alleged above, made extensively?

9. Were printed circulars having reference to the election issued by the respondent No. 1, his agents or other persons with their connivance without the names and addresses of printers and publishers borne on them? If so, has this illegal practice, as alleged in Schedule E of the election-petition, materially affected the result of the election?

10. To what relief, if any, are the petitioners entitled?

It may at once be noted that the ground indicated by issue No. 9 was given up by the petitioners at the commencement of the trial.

We take up now the other issues for consideration, one by one.

Issue No. 1—

With regard to this issue, what really appears is that the names of 54 voters of the Constituency appeared at one and the same place in the electoral-roll, which were all in English, all the remaining names in the entire roll appearing in Bengali. It further appears that in the list of the polling stations published under Section 25 of the R. P. Act, 1951, there was no note made about where these 54 voters were to cast their votes. There was a suggestion made on behalf of the respondent that all these voters were really Military personnel, to whom postal ballot-papers were to be issued. Though we have no definite evidence before us to this effect, this seems indeed likely. Indeed, the initial onus here was on the petitioners to establish that there was really any irregularity on this account, and this not having been done, we decide the issue against them.

Issue No. 2—

After our above decision, the point does not arise, and the fact alleged was not, in fact, substantiated by evidence, as conceded on behalf of the petitioners themselves.

Issue No. 3—

On this point, what the petitioners set out in their petition is that the Presiding Officers of the following 4 polling stations had not furnished the ballot-paper account in form No. 10 of the schedule 1 of the Representation of the People (Conduct of Election and Election-Petition) Rules, 1951, which will here-in-after be referred to shortly as Rules. That when this was discovered at the time of counting of votes, the Returning Officer had an account made in the above form by an Officer under him, designated the Election Officer, and thereupon there were discovered discrepancies between these accounts of ballot-papers as now made, and the account in form No. 14 under the Rules, which had been made by the Returning Officer at the time of counting. It was further found that in cases of these 4 Centres, the total numbers of ballot-papers found in the ballot-boxes exceeded the numbers of ballot-papers found to have been issued at the time of the poll. The discrepancies, as pointed out to us on comparison of the figures occurring in the above two sets of accounts, stand as follows:—

	Total of ballot-papers issued according to account in form No. 10	Total of ballot-papers found in the ballot- boxes according to account in form No.
Centre No. 38 (a)	450	452
„ No. 32 (Booth No. 1).	297	240
„ No. 16 (Booth No. 2).	178	211
„ No. 20	326	327;

a total excess of 39 ballot-papers, as found in the ballot-boxes of the 4 Centres.

On this point it may first be noted that it is not proved to our satisfaction that the accounts in form No. 10 were indeed drawn up in these cases at the time of counting. But yet, the fact remains that there were these discrepancies between 2 sets of accounts, and we are satisfied from the evidence of P.W. 1 that this was, in fact, also discovered at the time of counting of votes. P.W. 1 states that he kept a note of these discrepancies, he being present at the time of counting. Now,

what was argued on behalf of the petitioners from these above discrepancies is that these 39 votes found in excess were apparently cast in unauthorised ballot-papers and that when this discrepancy came to the notice of the Returning Officer at the time of counting, he should have held a further scrutiny of the ballot-papers found in the boxes, to satisfy himself that any unauthorised ballot-paper, particularly of some other Centres, may not have been dishonestly cast in these boxes, so that such unauthorised ballots might be left out of account. That there not having been such scrutiny by the Returning Officer, this should be looked upon as an act of irregularity which has the possibility of materially affecting the result of the election in the case.

We cannot give effect to this above contention. As such discrepancy was discovered at the time of counting, the petitioners might make an application to the Returning Officer for a total or partial re-counting, involving further and closer scrutiny, as provided for in the proviso to Rule 48. That was, in fact, the proper stage at which such a scrutiny might be asked for and made, and there is no evidence that this was done. The matter cannot thus be properly canvassed here before the Tribunal. Without all the connected records and documents having been produced for examination by the Tribunal, it cannot be said that re-conciliation of these discrepancies in accounts may not have been possible, and here indeed before us only the above 2 sets of accounts in forms Nos. 10 and 14 in respect of these 4 Centres are alone exhibited, and nothing more, from which no proper consideration of the question is possible. We would thus hold that really no irregularity of a material character affecting the result of the election, has been made out before us on this score and we accordingly dismiss the ground covered by issue No. 3.

Issue No. 4—

We now pass on to issue No. 4 which requires a detailed consideration and has in fact, received our anxious consideration.

The petitioners' case is that a number of Government servants who were electors of the Constituency were employed on duty at polling stations other than those where they were ordinarily to cast their votes, and that this was done at a very late stage, and these electors had not the opportunity in the circumstance to cast their votes in postal ballot-papers. That thus a number of voters was practically disfranchised. That this irregularity has materially affected the result of the election.

The petitioner has furnished evidence of 49 such instances by examining the persons who are thus said to have been deprived of the opportunity to cast their votes. It has been proved to our satisfaction that all these 49 witnesses were, in fact, voters of the Constituency, whose names appeared in the electoral-rolls. All of them state on oath that they would exercise this right of franchise if they had the opportunity, and they do all further state that having received their orders of appointment on polling duties at a very late stage, they did not find the time and the proper facility to cast their votes according to the special procedure, that is, by postal ballot.

The legal position on the point appears first to stand thus. Section 62 of the R. P. Act, 1951, gives to all persons whose names are entered in the electoral rolls, including those employed on duties at polling stations a right to vote, which must be regarded as a most valuable right of a citizen, and of an indefeasible nature. Section 169, Sub-section (2), Clause (d), of the Act provides that the Central Government may make Statutory Rules to provide for the manner in which the persons employed on duties at stations other than those where they are entitled to vote, are to exercise this franchise and Rules 37 and 38 are the Statutory Rules made in respect of this. Rule 37 provides that persons of this class are to apply to the Returning Officer for postal ballot at least 7 days before the date fixed for poll, and not later. This provision pre-supposes, to our mind, that these persons must have their orders of appointment on such polling duties at least 7 days before the date of poll if not also some days ahead of that too. That further without their having received actual orders of such appointments, it could not have been demanded of them to apply for the postal ballots ahead, and in anticipation. Evidence has been furnished to prove that some time in October 1951, the Chief Secretary to the Government of Assam had addressed all the Heads of the local Government Offices of the State, to keep their respective staff available for the election-work, and on 23rd December 1951, we further find a circular letter issued by the Deputy Inspector of Schools who is also the Secretary of the School Board, Silchar, as addressed to the Heads of all the Educational Institutions under the control of the Board, to keep the Teachers of the Schools in readiness for the

election-work, (*vide*, Ext. A). But we find from the evidence of P.W. 24 who was dealing with this particular matter at the time (and whose evidence finds support in that of the Election Officer, D.W. 1), that orders of appointment for these polling duties could be made ready only on the 29th or 30th December, after a list had been received by the Returning Officer from the Chief Electoral Officer, Assam, of persons who might be deputed for this work from the Provincial Headquarters. Indeed, from the evidence of the 49 witnesses of this group, examined on behalf of the petitioners, we find that 2 had received their orders of appointment on 30th December 1951; 14, on 31st December 1951; 10, on 1st January 1952; 13, on 2nd January 1952; 9, on 3rd January 1952 and 1, on 4th January 1952 and there is no sufficient reason on record why their above statements should not be accepted as true. Indeed, these statements of the witnesses remain unchallenged. Now, as we have observed, these persons could not under the law, be required to apply for the postal ballots in anticipation of their actual appointments, though some of these have had notice beforehand that their services might be required for the purpose. In casting votes by postal ballots one suffers from a fundamental disadvantage that the secrecy of ballot, a valued right conferred upon the voters, is substantially infringed, in as much as in such a case the voters have to disclose both their names and the numbers in the electoral-rolls, in the ballot-papers which would also disclose the candidate in whose favour the vote is cast. Then, once a postal ballot is taken out, such a voter cannot afterwards cast his vote in the ordinary way, maintaining the secrecy of ballot in full, even if he is not eventually employed on polling duty. So, such a voter cannot, under the law, be compelled to apply for a postal ballot in anticipation of his appointment. If indeed in the present case, the Returning Officer was faced with the difficulty in settling a final list of such employees till he received the list from Shillong, as deposed to by the D.W. 1, the Election Officer of Silchar the above anomaly might, to our mind, be avoided by making appointments of the local Government servants well ahead of the time, as soon as their list had been received, without waiting to make a final list till he had been equipped with a full list of the total number of persons required for the purpose, and it is not really explained how this could not have been possible.

In Craies on Statutory Law, 5th Edition, page 103, it is observed that though the general rule is not to import into Statute words which are not to be found there, even if the meaning of the same be not plain, it is permissible in certain cases to have recourse to a construction by implication, and to draw inferences and supply obvious omissions. In the light of the above observations on the rule of construction of a Statute, we would consider it a reasonable construction put on the language of the Rule 37, to hold that the Rule intended that the persons were to be appointed by the Returning Officer on duty at polling stations at least 7 days before the date fixed for the poll, if not, further, even sufficiently ahead of that period, and also that the orders of appointment communicated to the employees at the same time, so as to ensure to them the full time and opportunity to adhere to a rather lengthy procedure of casting their votes in an alternative manner, *i.e.* by postal ballot. This must have been the intention of the Statutory Rule so that the right of such voters to cast votes in this alternative manner might be properly ensured. It is to be borne in mind that such a voter had first to make an application to the Returning Officer for issue of a postal ballot on receipt of such an order of appointment, in which too he had to furnish his number in the electoral-roll. He has then to await receipt of the ballot-paper by registered post, after which he could record the vote in the ballot-paper and then again he has to obtain attestation of a Magistrate to some entries in the ballot-paper, and after all these, he has to send the ballot-paper to the Returning Officer, which again is to reach the latter by a certain time appointed by him. This is more or less an elaborate procedure which requires enough time and also involves some trouble, and on a proper construction of the provision of Rule 37, we hold that a Statutory obligation was also intended to be laid on the Returning Officer to make such order of appointment and also communicate the same to the person concerned, at least more than 7 days before the date of poll, if not, some more time ahead. Otherwise, as already noticed, the whole object of affording proper facilities to such persons sent out on a public duty in connection with the election, to exercise their right of franchise in this alternative manner will stand frustrated. On behalf of the respondent, reliance was placed on some observations in Parker's "Election Agent and Returning Officer," 5th Edition, page 277, to the effect that while Statutory provisions in general are mandatory where a thing is to be done by a voter, the same are only directory when it is to be done by a public officer, and it was from this, argued that if the Returning Officer had not, in fact, made the above orders of appointment more than 7 days before the date of poll, but did it later, the same may be regarded as substantial compliance with the requirement of the Rule unless these voters are actually found to have been prejudiced by reason of this delay. As against the above observation quoted from Parker's book, we may refer to some observations from Halsbury's "Laws

of England", Vol. 31, para. 692, occurring at pages 629-630, which run to the following effect:—

"Upon the principle that the ordinary sense of enacting words is primarily to be adhered to, provisions which appear on the face of them to be imperative cannot without strong reason be held to be directory; nor are those which are susceptible of a permissible meaning to be construed in the first instance as imperative. A duty, however, may exist, outside and apart from the enacting words whereby those on whom a faculty or power is conferred by the Statute are under an obligation to exercise it.Broadly speaking it may be said that provisions as to time in respect to procedure, and generally in public Statute, enacting words where the thing is to be done for the public benefit.....must be taken to have a compulsory force".

In the light of these above observations, we take the view that though it may not be an act of illegality if the Returning Officer has deviated from the ordinary procedure of making the orders of appointment in these cases more than 7 days ahead of the poll, on a proper construction of the provision of Rule 37, it appears to us that it was really compulsory on him to make the appointments at least more than 7 days before the date of poll and communicate the same to the employees. If in any circumstance, he was compelled to make any deviation from this ordinary procedure a heavy and onerous duty was cast upon him to make a full and proper arrangement under which these voters might have the fullest opportunity to cast their votes yet with expedition. There must have been an arrangement which was fully effectual for the purpose so that these voters might yet cast their votes in a smooth and easy way, and a wide notice of such an arrangement, having been made, should have been given to the voters which might attract them yet to take the opportunity of casting their votes in postal ballots. It may be naturally apprehended too that some of the voters may be under the mis-apprehension that as 7 days' time was not left for the poll, application for postal ballot would not be entertained. Some of the witnesses have actually deposed to this effect. There should have been a public notification to disabuse them of this idea. Nothing like the above is found to have been done in the case. On the other hand, we find from the evidence that things are allowed to drift in the ordinary way, and really the election office, where these voters could now go to apply for these postal ballots, was in fact, in a state of confusion, always being crowded by people, as was natural, because the date of poll was close at hand and all kinds of people would flock at the Office on sundry business in connection with the election. A large number of P.Ws. here deposed to the effect that they had, in fact, made attempts to obtain postal ballots even after receipt of the order of appointment late, but failed to contact the dealing assistant and also met with other difficulties, and this was mainly on account of the heavy rush. That there was a heavy rush at the office for these days was admitted by the Election Officer D.W. 1.

It was, however, argued on behalf of the respondent that on an examination of the evidence of these 49 witnesses, it would appear that a large number of them could obtain the postal ballot-papers in spite of orders of appointment received at a late stage, only if they had exercised due diligence and that their conduct would show that they had no real intention at all to cast the votes in postal ballots. It is from this further argued that such of these cases as would indicate want of such intention should, at any rate, be left out of account in determining how many of the above group of voters are proved to have been really deprived of the opportunity to cast votes. We may here note that it was not necessary for the petitioners to prove that all these voters would have cast their votes in her favour if they had the opportunity to do it. If there was only the possibility of the majority obtained by the respondent being wiped off, should the voters cast their votes, that would be sufficient to establish that by reason of this irregularity, the result of the election was materially affected. It may here be noted that there was a total difference of 46 votes as between the polls of the two candidates, out of which, as we may at once state here, 2 have clearly to be eliminated as being invalid votes cast in favour of the respondent in names of the persons who are proved to have been dead at the time, reducing the difference to 44 only, while the petitioner has proved 49 cases in which voters were deprived of the opportunity to cast votes by postal ballots. We now proceed to consider these cases separately, to see how many of them would really stand the test of a proper scrutiny of evidence. In this connection, it would be pertinent to observe that all these persons have stated on oath that they had really the intention to cast votes and would do so, if they had the proper opportunity and facility, which, as they say, they had not. That they had such an intention, as stated by them, has not in fact, been disproved by their cross-examination. We accordingly proceed now to consider all these 49 cases separately to ascertain whether there is further sufficient reason in any of them to reject the explanation that the witnesses offered on oath about their failure to cast their votes.

We start with the case of P.W. 60, Jyotirmaya Ghose who holds the office of the Controller, Relief and Rehabilitation, Silchar, who first received his order on the 4th January, to proceed to Hailakandi Polling Centre. Apparently he had not the opportunity to cast his vote by postal ballot. His name appears misspelt in the electoral-roll but his identity is satisfactorily proved.

There are 9 cases where orders were received on the 3rd January. They relate to P.Ws. 9, 11, 28, 29, 35, 41, 42, 50 and 53. We have looked into the evidence of these cases, and it is apparent that even with due diligence, no one of them could possibly secure the ballot-paper and cast his vote therein, before he had to leave for his Centre. The case of P.W. 63 may alone be referred to further. He was a voter who would in the ordinary course vote at a polling centre in the town of Silchar. He held the office of an assistant auditor of Local Accounts, with his Head Quarters at Gauhati. He had been on his official duty at Karimganj on the 3rd January where the Returning Officer of that Constituency detained him by employing him on polling duty at a certain Centre of Karimganj town. He says that accordingly he could not cast his vote, which he would have done, by reason of his being thus suddenly employed on polling duty, and there appears no sufficient reason to reject his plea.

We next come to the group of 13 persons, who received the orders of appointment on 2nd January 1952, and they are—P.Ws. 7, 10, 12, 13, 17, 22, 23, 26, 29, 33, 37, 38 and 40. We refer to the portions in the evidence of some of these witnesses, which are material for our present purpose. P.W. 7 says after receipt of the order of appointment on 2nd January 1952, he obtained a form of application for the postal ballot, but he had no time to present it, the distance of his Centre being 20 miles from Silchar. It was not brought out from the witness by cross-examination how it was that he could not present the application. It is to be remembered that he is to make his personal arrangement for leaving the town and for a place 20 miles off. P.W. 10 had to go to a Centre 10 miles off and says he had not the opportunity to apply for the ballot-paper. After receipt of the order by him, there was left only 2 days' time for the poll to commence. But his statement that he had no time to apply for the ballot-paper, this witness as well as others making a similar statement, they may have really meant that in the short period left to them, they thought it to be a hopeless task to get a ballot-paper and to cast votes therein, as besides a rather lengthy procedure, one had to go through in casting such ballot, the voters had also to make their own preparations in leaving the town on this duty, and then again leaving for the Centre in time. They had also to look to sundry business in connection with the election, before they left for the Polling Centre. So, in absence of a detailed cross-examination to bring out clearly that there was, in fact, want of diligence on their part, we cannot throw aside the explanation like that offered by the above witnesses. P.W. 10 stated that though the distance of his Centre was only 10 miles, he had no time to apply for postal ballot though he may have had yet 2 days' time left to him after receipt of his order of appointment. P.W. 12 states that on 2nd January, at 2 P.M. he handed over his application for a postal ballot to the clerk and waited in vain for 3 hours for the issue of the ballot-paper and then left for his Centre at noon. Though the distance of his Centre was 10 miles, he might have good reason to leave on 3rd January. P.W. 13 states that he had to leave for the Centre in the after-noon of 3rd January, and he could not try for a ballot-paper. In this case too, though the distance of the Centre was only 7 miles, there might be good reason to leave for the Centre on the 3rd, and nothing was brought out in cross-examination to show that it was not really necessary for the witness to leave for the Centre as early as that. P.W. 17 tried for a ballot-paper in the after-noon of the 2nd, but finding heavy rush, in front of the Election Office, he had to leave. Without further referring to the evidence of the remaining witnesses of the group separately, it may be observed generally that in their cases too, the explanations offered for failure to cast votes, may be accepted as adequate.

There are then 10 witnesses of the next group, who are proved to have received their orders of appointment on the 1st January. They are P.Ws. 8, 16, 20, 21, 39, 47, 48, 49, 51 and 53. P.W. 8 states that he received the order on 1.1. and though he does not disclose further when he left for the Centre, he states that the Centre was 30 miles off and that he could not find time to apply for postal ballot. It was not brought out in his cross-examination that between the time of his receiving the order of appointment and his leaving for the Centre, he had really ample time and opportunity to cast his vote if only he had been diligent enough. In the absence of such facts elicited by cross-examination, we do not think that we would be justified in rejecting his plea. The explanation of P.W. 16 appears adequate, so also of P.Ws. 21, 47, 48, 49, 51 and 53. Some of these witnesses have, of course, stated that they left on 3.1. for their Centres though the same were really at a short distances from the town and, upon this some comment was made. It may be that they had indeed to proceed for the Centres on the date, and there might be good reasons for this. It may be noted particularly that one out of the above witnesses, P. W. 47, who holds the office

of Asst. Deputy Director of Agriculture, stated that he had been under the impression that a postal ballot could not then be asked for, as this had to be done at least 7 days before poll, and this might, as already observed, have been naturally the impression of such voters from the words occurring in Rule 37, and there appears to have been no wide and adequate publicity given by the Returning Officer, to remove this probable impression from their minds, which might be one of the considerations that had weighed with many of them for not trying to cast votes in postal ballots. Within this group of persons who received their orders of appointment on 1.1., P. W. 20 had to go to a Centre only 9 miles off, and he says he left on the 2nd. He states further that he got a form of application on the 2nd but was unable to present it as he could not obtain his roll-number and the dealing clerk had asked him to fill in the form at once. Here too, there was no cross-examination to bring out that the witness had no good reason to leave for the Centre so early. It may be that he had such a direction from the Presiding Officer, or that he had some other sufficient reason for doing so and in the absence of facts elicited which might show that there was indeed no justification for his leaving for the Centre on the 2nd, we do not feel justified in rejecting his plea. P.W. 39 states that though he had got his order of appointment in the after-noon of 1.1, he had applied for a postal ballot on the previous day in anticipation, as one of his colleagues had done the same, and then he got the ballot-paper on the 2nd or the 3rd January, which he could not, however, get attested by a Magistrate before he left for the Centre, being in a hurry. That there was no Magistrate available for the purpose ready at hand. It is to be borne in mind that the witness had to go out to a Centre about 22 miles off, and it may really have been that he could not manage to meet a Magistrate for this attestation after he had received the ballot-paper, as he was in a hurry to leave for his Centre immediately. Here too, we would accept the explanation as adequate. The mere fact that in the case a postal ballot had in fact been issued to the voter, would not, in the peculiar circumstance count.

We lastly come to the group of the 16 witnesses who received their orders of appointment on the 30th and 31st December. P.Ws. 24 and 31 got it on the 30th and the rest, on the 31st. 4 or 5 days were, of course, left over in these cases between the dates of receipt of the orders of appointment and the day of the poll. Out of these, P.W. 2 states that he could not apply in time; that he left for his Centre on 2.1, though the distance is only 8 miles. It may be that he was actually required to leave on the 2nd under some direction of his Superior Officer, or for some other sufficient reason, and there was no cross-examination to bring out any fact to disprove such probability. If so, really one day's time was left to the witness before he left for the Centre. His explanation may therefore be accepted. P.W. 3 states that he asked for a form of application at the Election Office but was not supplied on the plea that the stock of these forms had been exhausted. We find from D.W. 1, the Election Officer that these printed forms were to be used only in cases of the Military personnel and that others were to apply in blank papers. So, there was no inherent improbability in the witness's statement that he could not get a form from the office when he asked for it and he may not have had time to make any further attempt to apply, the distance of his Centre being 33 miles. P.W. 4 states that he had received the direction to leave for the Centre, a distance of 16 miles, in the morning of 3rd January and he had not thus found the time to apply for the ballot-paper. He had only 2 days' time left to him and he might have other business to attend to. So, his explanation, as also that of P.W. 5 who too had to leave for the Centre, a distance of 10 miles only on the same date, may be accepted. P.W. 6 left for his Centre, a distance of 21 miles on 3.1, and he had applied for a ballot-paper on the same day, which was not delivered to him at once but was later received by him by post, which was after the election was over. His explanation is accepted. P.W. 14 left of course for the Centre, a distance of 7 miles on 4.1, but he came to the election office for a ballot-paper once on the 2nd or the 3rd but failed to contact the dealing assistant on account of heavy rush. P.W. 15 got his order of appointment in the evening of 31st December, and since tried for a ballot-paper but failed to secure one due to heavy rush. P.W. 18 tried for a ballot-paper on 2 occasions, once on 2.1, and again on 3.1 but failed on account of heavy rush, and had to leave for the Centre on 3.1. P.W. 19 similarly failed, though he tried for it on 2.1, and then had to leave for the Centre, a distance of 22 miles, in the afternoon of 3.1. P.W. 25 left for the Centre, a distance of 14 miles, on 3.1, and had before this made one unsuccessful attempt to obtain a ballot-paper. P.W. 31 had obtained the order of appointment on 30.12, and had to leave for the Centre, a distance of 32 miles on 2.1. He had gone to the election office on 2.1, and had obtained a form of application but then did not find time to obtain his roll-number and to present the application, before he left for the Centre. P.W. 32 obtained the order of appointment on 31.12 and left for the Centre, a distance of 7 miles, on 3.1. He had before this made an attempt to

apply for a ballot-paper but could not contact the dealing assistant due to heavy rush, and he could not wait for long at the election office as he had to attend to business in connection with his polling duties. P.W. 52 received his order on 31.12 and had to leave for the Centre, a distance of 8 miles on 2.1 and had not got the time to apply for a ballot-paper, he having been busy at his own office on 1.1 for preparing pay-bills of the staff. There was no cross-examination in his case to elicit that there might have been no sufficient reason for him to leave on 2.1. The explanation given by the above witnesses in these cases may therefore be accepted also. P.W. 36 states that he had received the order of appointment on 30th or 31st December and left for the Centre, a distance of 18 miles on 3.1, and had never called at the election office which was close to his own, for a ballot-paper. He said that he had no time to pay a visit to the Election Office. The cross-examination of the witness was not pursued to bring out that he might not really have some good reason to be prevented from calling at the Election Office for the above purpose, before he left for the Centre. So, in his case too, we are inclined to accept the explanation offered by him.

There are now left 2 more cases of the group where some doubt may be entertained about the sufficiency of the explanation offered. P.W. 24 who held the office of the bench-assistant of the Munsif of Silchar, was working in the Election Office since 24th December and was actually dealing with the issue of orders of appointment of the Presiding Officers and the Polling Officers. He got his own order of appointment as a Polling Officer on 30.12, and he left for the Centre, a distance of 20 miles on 3.1. He states that he did not apply for a ballot-paper under the impression that this could not be done unless 7 days' time was yet left before the date of the poll. It really appears difficult to accept his above explanation for his failure to obtain a ballot-paper and cast his vote in time. Working at the Election Office during these days, it was only probable that his impression that a ballot-paper had to be applied for 7 days ahead, had, in fact, been removed, and it appears that he would not have any real difficulty to apply for a ballot-paper some time during these days and cast his vote thereon, if he was really serious about it. P.W. 30 again who got his order of appointment on 31.12, left for the Centre, a distance of 7 miles only, as late as 4.1. He simply says that he could not apply as he had, in the meantime, failed to secure his roll-number. It was really the voters' business to find out the roll-number which was to be given in the application for the ballot-paper, and in view of his above statement we have to find that he had really the opportunity to cast his vote and he neglected to do it.

But for these last 2 cases, we do, in fact, find that on the evidence, such as it is before us, we would not be justified to hold that any of the other 47 voters who have been examined in the case failed to a veil of a reasonable opportunity to cast their votes in postal ballot, in spite of the same being available to them, and we would accordingly find that in 47 out of 49 cases, the voters had not had the proper opportunity to exercise their right to vote due to their orders of employment on polling duties having been made too late. These are held by us to have been acts of irregularity and instances of non-compliance with the Statutory provision contained in Rule 37, which have in fact materially affected the result of the election, in as much as the number of the voters proved to have been thus deprived from casting their votes, exceeded the narrow majority of 44 that is found on final analysis to stand in favour of the returned candidate. This we hold to be a sufficient ground for declaring the election of the respondent No. 1 to be void.

Issue No. 5—

The issue is accordingly to be answered in the affirmative so far as Issue No. 4 is concerned, and in the negative in respect of the other issues.

Issues Nos. 6 and 7—

In the election-petition, the petitioners set out 75 instances in which there was impersonation, votes having been cast in the names of dead persons, as per Schedule B of the petition and, 32 more cases in which there were votes cast in names of absent persons, as per Schedule C of the petition. Evidence was, however, actually furnished of only a very small number of cases of impersonation.

First, oral evidence with the connivance of the agents of the respondent No. 1 was furnished in 2 cases, namely, of (1) Tabarennesa of Kanakpur, Part I, and (2) of Tajammulali of the same village. Tabarennesa is said to be the 2nd wife of one Ali Ahmed, who had died about 2 years before, it being said that the 3rd wife of the man was brought in to personate. The name of Tabarennesa appears under serial 197 of the electoral-roll and a vote is found to have been cast in the name of the person in favour of the respondent. The name of Tajammulali appears under serial 169 of the electoral-roll of the same village and a vote in the name appears

also to have been cast in favour of the respondent. It has been said that Tajammulali had really left for Pakistan about 2 years before and was not really present at the time of poll. It is found in evidence from the side of the petitioners that Fakar uddin, son of the aforesaid Aliahmed by his deceased wife Tabarennesa, was the polling agent of the respondent at the Centre in question, and, further, Aliahmed himself was one of his workers. That both of them identified the 3rd wife of Aliahmed brought in to personate Tabarannesa and P.W. 34 (agent of the petitioners) and P.W. 39 (agent of Sati Mohan Deb, another candidate) challenged the identity. In the other case, a false person of the name of Kamaluddin came to personate Tajammulali and while P.Ws. 34 and 59 and one other candidate, Jalaluddin challenged the identity, Fakaruddin and Aliahmed, agents of Mehrabali identified him. Oral evidence has been furnished upon both these alleged cases of personation by P.Ws. 34 and 59 only, and we are unable to rely upon the evidence. It was said by the witnesses that objection challenging the identity in both the cases, were presented to the Presiding Officer in writing, but we don't find any such document forthcoming. If the identity of the voter had, in fact, been challenged in these cases, as stated, we would, under the Rule, expect entries made in the list of challenged votes in form No. 9 of the Rules. Nothing like this appears to have been done. Member Panchayat of the village, Taiyabali and Idrisali, a teacher of the local Primary School, are said to have been present at the polling booth, but none of them is produced to corroborate the alleged challenge of the identity in the 2 cases. On a consideration of the evidence, we cannot hold the allegation as satisfactorily proved.

It was then proved also by the P.Ws. 34 and 59 that there was personation of one, Mahabbarali who had come to live at Kanakpur Part I from Noakhali but had since left the place, which was long before. The name of the person appears under serial 208 in the electoral-roll and a vote in the name is indeed found to have been cast in favour of the respondent. The vote was cast in the same Centre but the above witnesses made no challenge in this case, so in the cases of 2 other persons, namely, Maniruddin who is said to have been insane for about 15 years and, secondly, one Mainuddin who is said to have been absent at Gauhati at the time having been a student of a Survey School there. In these two cases also votes are found to have been cast in favour of the respondent. We cannot consider the evidence of personation furnished in the cases also satisfactory.

Evidence was next furnished of 4 persons, who had been Police Constables here having left on the service of Pakistan after the partition, and in their cases too, there is said to have been personation. P.W. 43, who is a Head Constable of Silchar, came and proved from a register that 4 persons of the names of Tajammulali, Tajmulali, Habibali and Tafazulali had opted for Pakistan service after the Partition, but then there was no satisfactory evidence to prove that these persons had, in fact, been personated.

Evidence was next furnished by the Officer-in-charge of the Police Station at Silchar, P.W. 57, from the death-register, of 4 persons having died before the election. With regard to these 4 persons, votes are found to have been cast in favour of the respondent by false personation in the names of Hasimali, and Namorali of Neargram only. In respect of one, Abdul Jalil of Baghpur, vote is not found to have been cast for the respondent. In respect of the 4th, namely, Tasumia, his father's name does not appear in the death-register, and there is no more evidence to identify this dead person with the voter numbered 220 of Neargram, in whose name a vote was indeed cast in favour of the respondent. 7 P.Ws. came to prove personation, namely, P.Ws. 34, 43, 44, 45, 55, 56, 57 and 59 and upon scrutinising the whole evidence on the point, only 2 cases of this are found to have been established by satisfactory evidence, and they are of the 2 dead persons of Neargram, namely, Hasimali, and Namorali whose votes were also cast in favour of the respondent, and they are only to be left out of computation from the total poll of the candidate.

Issues Nos. 6 and 7 are answered accordingly.

Issue No. 8—

Upon this issue, 8 witnesses were examined for the petitioners, namely, P.Ws. 1, 34, 48, 54, 58, 59, 61 and 62. On an examination of the whole evidence on the point, we may first observe that we are inclined to believe that there had been some propaganda in an area of the Constituency with a majority of Muslim population, to the effect that it was against the Quoranic injunction to elect a woman to a public body like the Legislative Assembly.

We refer first to the evidence of P.Ws. 54, Shri Wajid Ali, a senior Pleader of the Silchar Bar. He speaks of reports having reached him that there had been going on such a propaganda in the locality, and on being requested on behalf of the Congress Party, and the Petitioner, he with others addressed some meetings in the same locality and gave out that there was, in fact, no injunction in the Quoran to prohibit election of a woman. From the manner in which the witness deposed, we are inclined to rely upon his above testimony. Indeed, there is found no adequate reason on record to discredit the same. In this, he was corroborated by P.W. 46, Gulam Sabir Khan, another Muslim. Though he is the Vice-President of the District Congress Committee, we are not disposed to believe that he should have spoken of such a propaganda by reason of his connection with the Congress Party. The above fact is also proved by P.W. 62, Shri Hem Chandra Chakravarty, an Advocate, a sitting Member of the Assam Legislative Assembly and the President of the District Congress Committee. Of course, barring a single instance deposed to by Shri Wajid Ali from his personal knowledge, the above 3 witnesses spoke of the above propaganda from reports received. Wajid Ali Saheb, however, speaks of one single instance of such propaganda from his personal knowledge. He states in his cross-examination when it was put to him whether he had, in fact, personal knowledge of such propaganda, that one day while he was passing by the Janiganj Bazar Road of Silchar town, he found a number of people, about a 100, gathered at a certain shop standing by the road, and they are being addressed by one Sufi Abdul Gaffar, who, as he further says, is a man carrying considerable influence in the locality. He heard the Sufi address the people saying that it was against the Quoran, to vote for a woman, nay, for a non-Muslim for the matter of that, when there were Muslim candidates. The witness of course states that he did not stop near the shop long to hear the speaker but immediately left the place. Yet we do not find adequate reason to disbelieve the testimony of Wajid Ali Saheb to this above effect. The witness again states that on another occasion as Sreejukta Chanda went to the house of one Sufi Mvi. Maqbul Hussain of Baghpur in the company of the witness and some others, the petitioner having gone there to ask for the blessings of the Sufi for her success at the election, the witness met some Maulavis (theologians) assembled at the house of the Sufi. Sreejukta Chanda asked for the blessings of these Maulavis also, which they gave her, and after Sreejukta Chanda had gone inside the house of the Sufi in the company of the latter, Wajid Ali Saheb having been left in the outer-house alone with the other Maulavis, asked them about their real views in respect of the candidature of Sreejukta Chanda and also whether she would have their support, when they said, in reply, that they could not support her themselves and would not ask other Muslims to do it, because it was against the religion to vote for a woman and, also for a non-Muslim. This evidence of P.W. 54, lends support to a propaganda like this having been really carried on in the locality.

Out of the witnesses proving such propaganda made at some public meetings from their personal knowledge, P.Ws. 34, 59 and 61 are men of the locality and some reliance may indeed be placed on their evidence in so far as it proves that at those meetings there had indeed been such a propaganda though on other points of detail in respect of what had really taken place in the meetings we are unable to depend on their testimony, for reasons which shall be disclosed presently.

On a consideration of the evidence we are thus inclined to believe that a propaganda like the above had indeed been carried on in the locality and there was counter-propaganda by the Congress Party and others, holding similar other meetings.

But then, it would not be enough in the case that there was such a propaganda: It had to be further proved that this was done at the instance of Mehrabali Saheb, which was indeed the specific case set out in the election-petition, and which was made a ground for declaring only that the election of this returned candidate is void. No case was put forward in the election-petition that apart from such propaganda carried on at the instance of Mehrabali Saheb, there was generally an undue influence of the nature exercised and that on an extensive scale which might afford a sufficient ground for declaring the whole election void.

Now, about the evidence of complicity of the respondent in the above propaganda, a rigid standard of proof is required, this being a case of major corrupt practice that the respondent is charged with, and, as observed in the case reported in the Indian Election Cases by Sen and Poddar, at page 231 (Bhalwal Muhammedan Constituency), the standard is to be one as is demanded in a Criminal case. In this connection, it may, at the out-set, be observed that there was no inherent improbability in such a propaganda having been carried on by some Muslims of the locality on their own initiative, without Mehrabali having induced

the same. They might have carried on such propaganda on their own initiative with a view to get one Muslim candidate returned, there being in fact, another Muslim candidate standing for the election.

Now, of the witnesses to prove the alleged complicity of Mehrabali in the propaganda, P. W. 34 Hafizur Rahman said that at the meeting of Kanakpur which the witness had attended, some persons exhorted the audience, as above, and they did this on behalf of the respondent. But he does nowhere in his deposition say that he saw Mehrabali present at the meeting or any of his agents or workers. So, the above statements may look like his opinion only, upon which we cannot count. It may here be further noticed that this witness admits that the man who addressed the meeting were not Maulavis (theologians), but were simply the leading men of the village. It is necessary to prove, at least, that such propaganda came from persons whose words carried considerable weight with the people in matters of religion. In this view too, the evidence of P. W. 34 is not sufficient for the purpose of establishing the plea of undue influence. P. W. 58, Lakshman Gowala who according to his own statement, chanced by accident to be by the side of a meeting held outside the village Mosque of Baghpur, did not also speak of Mehrabali having been present at the meeting. P. W. 59, Muslim Uddin Barlasker spoke about two meetings, the first at Gabindapur Bazar, about 9 days before the election. Though he stated that the meeting was addressed on behalf of Mehrabali by one, Munshi Talyeb Ali of Algapur, he does not state further that Mehrabali or any of his agents were present at the meeting. So, his statement too, on the point, may be regarded as a mere opinion, upon which we are unable to rely. The witness spoke of a 2nd meeting held at Bagadar where the Congress, the witness's own party, namely, the K. M. P. and Mehrabali's men were present. It is said that one Maulavi Abbasali of Neagram who was the President of the meeting, and addressed it last of all, said that the Quoran forbade election of a woman. The witness said that this speaker addressed the meeting on behalf of Mehrabali, without further disclosing any fact upon which his above statement was based, and so, we are to regard his evidence too as amounting to a mere opinion, upon which we cannot rely. The last witness, P. W. 61, Sonahar Ali speaks of 2 meetings which were addressed as above, on behalf of Mehrabali. The first of these meetings, he speaks of, is one of Gabindapur Bazar, held 9 days before the poll, and he says that Mehrabali was in fact present at the meeting and himself spoke, though P. W. 59 speaking about the same meeting does not say a word of this. The other meeting he speaks of is held at the same place later which, as he says, was called by the same Talyeb Ali Munshi which, as the witness adds, he did at the instance of Mehrab Ali's men and one, Maulana Nurali is said to have addressed the meeting making similar exhortations. We can hardly rely on the bare statement of this witness that the last meeting had been called at the instance of Mehrabali. About the general credit of the above witnesses, P. W. 34 was a worker for the petitioner in the last election. P. W. 58 was her polling agent at a certain Centre and was merely a chance witness to a meeting he spoke about. P. W. 59 was a worker for Sati Babu, another candidate who may yet have some interest in the result of this election-petition. This witness went falsely to deny that there was a criminal case under the Forest Regulation, pending against him in Court, nay, even further to deny that there was such a case at all—statements which show that the witness had no regard for truth. P. W. 61 had been a polling agent for the petitioner and was for some time a teacher of a Lower Primary School under the control of a Board of which Sreejukta Chanda had been previously the President, which office she had resigned before the election and again took up after the election was over. It is not unlikely that the witness may yet look up to Sreejukta Chanda, as the President of the Board, for patronage in case an opportunity arise in future for him to ask for employment as a teacher in a Primary School. These are the facts which we have to take into consideration in making a proper estimate of the credit of the above witnesses. Though we may have some reason to rely on their evidence that at some meetings they heard propaganda, as above made, we cannot further depend safely on their evidence to prove the connection of Mehrabali with these meetings.

We do not also find distinct evidence in proof of the fact that the persons said to have addressed the above meetings were really persons whose words carried considerable weight with the people thus addressed, and in matters of religion. The evidence of P. W. 34 on the point has already been referred to. Evidence of P. W. 58, a chance witness, can hardly be considered seriously. He had not known the men who addressed the meeting he spoke about, and came to know their names on enquiry at that very time, and also what influence they really carried. With regard to P. W. 59, and P. W. 61, they simply said that Munshi Talyeb Ali and Mvl. Abbasali who had addressed the meetings the witness referred to, were versed in Islamic theology, without further proving how much of

religious influence they actually carried with the people addressed. P. W. 61 describes another speaker of a certain meeting, viz., Nur Ali simply as a Maulana without furnishing the further evidence with regard to his real influence in matters of religion. Though it has been observed in the case of Amritsar City M. R. Constituency, 1937, reported at page 34 of the Indian Election Cases by Sen and Poddar, upon which case the petitioners have relied, that spiritual undue influence can be exercised among the Muslims by lay-men such as Maulanas and such others, without their being Pirs (that is, spiritual leaders), the men must be proved to be persons for whose opinion on matters of religion, the community had great regard. The evidence on this last point has not here been quite satisfactory. Of course, an appeal to the voters such as these, in the name of the Quoran, as proved, would have been held in the nature of mental coercion if they had been proved to have emanated from persons whose opinion in matters of religion carried considerable influence with them, on which last point, as already observed, the evidence has not been quite satisfactory.

On an examination of the whole evidence on the issue thus, we hold that a case of undue influence has not been established here, and we cannot accordingly give effect to the ground taken in issue 8, and we have to answer the issue against the petitioners.

Issue No. 10.

In the result, we are simply to declare the election of the respondent No. 1 as void. The election of the petitioner No. 1 to be declared as elected is not established.

With regard to cost, as the petition succeeds only on the ground of an act of irregularity committed by a Public Officer, to wit, upon the issue No. 4 alone, we would put the parties to their respective costs.

ORDER.

It is accordingly ordered that the election of the returned candidate Shri Mehraball Lasker (respondent No. 1 of the case) is simply declared as void. The parties are put to their own costs

[No. 19/42/52-Elec. III.]

Sd./- U. N. Bezbaruah. } *Members.*
Sd./- U. K. Gohain. } 1-2-53.

Sd./- A. Das.—*Chairman.*
1-2-53.

S.R.O. 356.—WHEREAS the election of Shri Nirmal Chandra De, of 5 Chhidam Mudi Lane, Calcutta, as a member of the West Bengal Legislative Assembly from the Burtolla constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Sudhansu Sekhar Ghosh of 3 Jagannath Sur Lane, Calcutta-6;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, WEST BENGAL.

ELECTION PETITION No. 119 OF 1952

ELECTION CASE No. 3 OF 1952 OF WEST BENGAL

CORAM

Sri S. C. Ray Chaudhuri, M.A., LL.B.—*Chairman.*
Sri M. N. Gan, M.A., LL.B., } *Members of the Tribunal.*
Sri S. K. Bhose, M.Sc. LL.B. }

In the matter of an application under Sections 81 and 84 of the Representation of the People Act, 1951.

AND

In the matter of Sudhansu Sekhar Ghosh, residing at 3, Jagannath Sur Lane, Calcutta (Zone No. 6) in the State of West Bengal.—*Petitioner.*

Versus

(1) Satyendra Nath Basu, residing at No. 12/2, Nilmoni Mitra Street, in the town of Calcutta,

- (2) Nilambar Chatterjee, residing at No. 110, Ram Dhona Mitra Lane, in the town of Calcutta,
- (3) Nirmal Chandra De, residing at No. 5, Chhidam Mudi Lane, in the town of Calcutta,
- (4) Banku Behari Ghosh, residing at No. 12B, Hem De Lane, in the suburbs of Calcutta.
- (5) Hemendra Prosad Ghosh, residing at No. 12/10, Goabagan Street, in the town of Calcutta,
- (6) Ramanath Ghosh, residing at No. 11/2, Goabagan Street, in the town of Calcutta,
- (7) Nirendra Nath Majumdar, residing at No. 76/2, Cornwallis Street, in the town of Calcutta,
- (8) Sudhir Chandra Roy Chowdhury, residing at No. 51, Badridas Temple Street, in the Suburbs of Calcutta.
- (9) Satyendra Nath Sen, residing at No. 19, Hemendra Sen Street, in the town of Calcutta.
- (10) Aparesh Bhattacharya, residing at No. 30C, Hartuki Began Lane, in the town of Calcutta.—*Respondents.*

*For Petitioner—**Counsels*

1. Sri N. R. Das Gupta
2. Sri A. K. Sen
3. Sri Ajoy Kumar Basu
4. Sri S. Roy
5. Sri S. Mukherjee
6. Sri B. N. Sen.

(instructed by Sri Pronab Ghosh, Solicitor).

*For Respondent No. 3—**Counsels*

1. Sri T. P. Das
2. Sri Nirmalendu Roy
3. Sri Nutbehari Dutt—*Pleader.*

(instructed by Messrs. Sen & Dey, Solicitors).

For Respondent No. 10—

Sri Monomohan Ghosh—*Pleader.*

The 7th of February 1953

JUDGMENT

The petitioner Sudhanau Sekhar Ghosh, an elector of Burtolla Assembly Constituency of Calcutta in West Bengal presented the Election Petition under Section 81 of the Representation of the People Act 1951 calling into question the election of the returned candidate Nirmal Chandra De, Respondent No. 3 on various grounds and claiming under Section 101 (b) of the said Act a declaration that another candidate, namely, Respondent No. 8, Sudhir Chandra Roy Choudhury has been duly elected, as but for the votes obtained by the returned candidate by corrupt or illegal practices the said other candidate would have obtained a majority of the valid votes. The election was held on 22nd January 1952 and the result was announced on 8th February following. The nomination papers of the 10 respondents were accepted on scrutiny but one of them, namely, Respondent No. 10, Aparesh Bhattacharya subsequently withdrew his candidature and there was contest among the rest. Respondent No. 3 having secured the majority of votes polled, numbering 6682, was declared as duly elected. Respondent No. 8, Sudhir Chandra Roy Choudhury obtained the next highest number of votes, viz., 6,590, i.e., 92 votes less.

Interference with the free electoral rights of many voters by exercise of undue influence, coercion and intimidation by or on behalf of the returned candidate, procuring the applications for ballot papers in the names of dead, absentee or fictitious voters by other persons with the connivance of the returned candidate or his agents, improper reception of ballot papers not issued from any of the polling booths within the constituency improper acceptance of the vote cast by false personation in the name of one Apanga Bhattacharyya on the identification by the polling agent of

the returned candidate inspite of challenge on behalf of Respondent No. 8, have been alleged as grounds for declaring the election of the returned candidate, Nirmal Chandra De void. The details of material particulars have been given in paragraph 11 of the Election Petition as required under Section 83 of the Representation of the People Act, 1951.

The election has been further challenged on the grounds of noncompliance with the provisions of the Representation of the People Act, 1951, in consequence of which the result of the election has been materially affected,—namely, not opening certain polling booths at the notified hour and not continuing the polling for the total period prescribed by the statute as a result whereof numerous voters who had come to cast their respective votes could not find it convenient to vote at all, and refusal to allow certain electors of Nos. 80 and 81, Durga Charan Mitra Street, to cast their votes at Booth No. 29B and thereby preventing them from exercising their right of franchise.

Further question has been raised that the inclusion of the name of the returned candidate Nirmal Chandra De in the electoral roll under Section 25 (a) of the Representation of the People Act, 1950 was *ultra vires* and, as such the result of the election has been materially affected by improper acceptance of his nomination paper.

In giving details of the corrupt and illegal practices mention has specifically been made of the name of the Chief Engineer, Calcutta Corporation, Sri Dwijendra Nath Ganguly who, according to the case made in the petition, himself and through his subordinate municipal employees Ram Chandra Banerjee, Nanda Dulal De, Bipath Rajwar, Hiranmoy Shome Choudhury and Manick Ram, with the connivance of the returned candidate or his agent, exercised undue influence, coercion and intimidation to compel the non-Bengali electors residing at No. 72/1 Grey Street to cast their votes in favour of the Congress candidate Nirmal Chandra De. The Chief Engineer, Sri Dwijendra Nath Ganguly is said to have given permission to the municipal employees Nanda Dulal De (in relation of the candidate Nirmal Chandra De) and Bipath Rajwar to act as polling agents of the said Congress candidate, who manipulated to procure the votes of dead, absentee and fictitious electors through others. Allegation has been made that Nanda Dulal De, the polling agent watched the actual voting in Booth No. 11A where the electors of No. 72/1 Grey Street, the Corporation mazdoors, had to cast their votes, giving warning to the said electors that he would be able to know for whom they voted observing their movements within the Booth and they would be put to various troubles if they did not vote for the Congress candidate.

In describing the manner of undue influence, coercion and intimidation, allegations have been made that from 17th January onwards till before the day of polling on 22nd January 1952 several meetings were held at 72/1, Grey Street where the Corporation mazdoors of Gowkhana and North Garage of the Motor Vehicles Department, resided, exhorting the voters that unless they voted for the Congress candidate Nirmal Chandra De, they would find it difficult to keep their jobs and work in the Corporation of Calcutta, their services would be terminated, their ration cards registered at the Corporation Ration Shop would be seized and those who came from outside Bengal would find it impossible to leave for their native places after their dismissal from Corporation services; while on the other hand if they voted for the Congress candidate, their service conditions would be improved beyond all measure, the temporary hands would be made permanent, their residential quarters would be improved and full facilities would be given to them with regard to the electricity and water connection at the said premises No. 72/1, Grey Street.

In Annexure E of the Petition, list of other election meetings held at different places has been given in which the non-Bengali voters were alleged to have been threatened that if they did not vote for the Congress, the non-Congress Bengalis would come into power and completely ruin, annihilate and drive them away from the State of West Bengal. Several other Annexures under the heads A to D have been given with the petition mentioning the names of a large number of registered electors who were alleged either to be dead or absentees or fictitious persons or persons who could not be traced as ever residing at Calcutta at all material times before or during election, but votes in their names were recorded in favour of the returned candidate Nirmal Chandra De by false personation with the connivance of the returned candidate Nirmal Chandra De or his agents.

The Respondent No. 3, Nirmal Chandra De, has contested the case. Respondent No. 10, Aparesh Bhattacharya who withdrew his candidature entered appearance and watched the proceedings. He did not file any written objection nor did he adduce any evidence. Other respondents are absent though notices were served on them.

The Respondent No. 3 categorically denies all the material allegations of undue influence, coercion, intimidation, personation, interference with the free electoral

rights of the voters and casting of false votes on behalf of the dead, absentee or fictitious voters with his connivance or with the connivance or manipulation of his agents. He refutes all charges of corrupt and illegal practices levelled against him and emphatically denies further allegations about the holding of meetings at 72/1 Grey Street from 17th January onwards till the 21st of January 1952 to threaten and intimidate the mazdoors in the manner alleged. Holding of election meetings at other places to threaten the non-Bengali voters, as alleged in the Election Petition, by him or by his agents or with his connivance, has also been totally denied. Nanda Dulal De and Bipath Najwar are admitted as his polling agents, but allegations of corrupt and illegal practices said to have been resorted to by them are not only denied, but on the other hand it is added that definite instructions were given to all his agents, workers and supporters on the eve of the election not to resort to any corrupt practice including personation or in any way to help any such corrupt practices under any circumstances at any of the booths.

The story of his visiting the Corporation Chief Engineer Sri Dwijendra Nath Ganguly and attempting to influence the voters with his help on 17th of January 1952 or on any other date during the election period and the further story of direct or indirect interference or attempt to interfere with the free exercise of the electoral right of numerous or any of the Corporation employees with the help of the said Dwijendra Nath Ganguly and other Corporation employees Ram Chandra Banerjee, Hiranmoy Shome Choudhury, Manick Ram and others with his, or his agent's knowledge, sanction or connivance, as alleged or hinted, are categorically denied.

It is averred that his name was legally and rightly included in the electoral roll of the Burtolla Constituency and the acceptance of his nomination paper was just and proper, that there was no non-compliance with any of the provisions of the Representation of the People Act, 1951 and that the result of the election has not been materially affected on any account. It is not admitted that Polling Booths were opened late and were not kept open for the full statutory period as a result thereof numerous voters who had come to cast their respective votes could not find it convenient to vote at all. The allegations of refusal by the Polling Officer of Booth No. 29B to record votes of registered voters of premises No. 80 and 81 Durga Charan Mitra Street, numbering about 43, who went to the said Polling Booth to cast their votes in favour of the Respondent Sudhir Chandra Roy Choudhury, have also been denied.

The following issues as amended during the commencement of the hearing of the case arise for decision. Both parties have adduced voluminous oral and documentary evidence.

ISSUES

1. Was the alleged inclusion of the name of Respondent No. 3, Nirmal Chandra De in the Electoral Roll *ultra vires* of Section 25(a) of the Representation of the People Act, 1950 and has the result of the election been materially affected by any non-compliance with the provisions of the Act XLIII of 1950 or by the improper acceptance of his nomination?

2. Has there not been a free election by reason that the corrupt practice of undue influence has extensively prevailed at the election and/or is the election of the returned candidate void by reason of the electors having been deprived of free exercise of their electoral right on account of any direct or indirect interference or attempt to interfere on the part of the returned candidate, Respondent No. 3, Nirmal Chandra De or his agent or of any other person with his or his agent's connivance, or on account of any corrupt practice by any other person or persons?

3. Is the election of the returned candidate void by reason of the corrupt practice of procuring or abetting or attempting to procure the applications by persons for ballot papers in the names of other persons, whether living or dead, or in fictitious name by the returned candidate, Nirmal Chandra De, Respondent No. 3, or by his agent or by any other person or persons with the connivance of the said returned candidate or his agent?

4. Is the election of the returned candidate void by reason that coercion or intimidation has been exercised or resorted to by the returned candidate, Nirmal Chandra De, Respondent No. 3, and by/or by his alleged supporters or agents on the Non-Bengali employees of the Calcutta Corporation, who are all electors, to vote for the Congress candidate, Nirmal Chandra De, Respondent No. 3, as alleged?

5. Has the result of the election been materially affected by improper reception of 46 ballot papers which were not issued from any of the Polling Booths within the constituency, and for not keeping the Polling Booths open for the statutory period and also for refusing to allow certain voters to register their votes in Polling Booth No. 29B?

6. Can the election of the returning candidate, Nirmal Chandra De, Respondent No. 3, be declared void and/or the Respondent No. 8, Sudhir Chandra Roy Choudhury be declared to have been duly elected on the ground that but for the votes obtained by the said returned candidate by corrupt or illegal practices the said Sudhir Chandra Roy Choudhury, Respondent No. 8, would have obtained a majority valid votes, or on the ground that in fact the said Respondent No. 8, Sudhir Chandra Roy Choudhury received a majority of valid votes? Or can the election be declared wholly void?

7. What relief, if any, the petitioner is entitled to?

DECISION

1st Issue.—The learned counsel Mr. N. R. Das Gupta for the petitioner abandons the first issue after the close of the evidence when he argues the case.

Objection was raised as in the original roll of Burtolla Constituency the name of the Respondent No. 3 Nirmal Chandra De did not appear. It is in evidence that on the basis of an application under Section 25(a) of the Representation of the People Act, 1950 the name of Nirmal Chandra De was registered under Rule 20(2) of the Representation of the People (Preparation of Electoral Rolls) Rules, 1950 and the Electoral Roll was amended adding an addenda and corrigenda, Ext. G. Ext. 4 is the order of the Election Commission and Ext. 44 is a complete Electoral Roll of the constituency which includes the said addenda and corrigenda in which the name of Respondent No. 3 Nirmal Chandra De appears as an elector of 1951. The question of *ultra vires* has not been pressed. There was no improper acceptance of the nomination and the result of election was not materially affected on account of any improper acceptance of nomination. There is thus no case under Section 100(1) (c) of the Representation of the People Act, 1951.

2nd Issue.—This issue has also been abandoned as no case under Section 100(1) (a) of the Representation of the People Act, 1951 can be made out by satisfactory evidence establishing that corrupt practice of undue influence extensively prevailed at the election.

5th Issue.—This issue is next taken up as part of it has been given up and the rest of it involves certain questions of law.

The first part of this issue questioning the reception of 46 excess ballot papers not issued from any of the Polling Booths within the constituency has been given up. In the Return of Election in Form No. 16, Ext. 12, there is mention of 46 excess ballot papers as found on verification under Rule 49 of the Representation of the People (Conduct of Election and Election Petitions) Rules, 1951. The Respondent No. 3 in para. 11 of his written statement asserted that those excess ballot papers were found in boxes other than any assigned to him presumably none of them was in any event taken into account in arriving at the result of the election. This statement of the Respondent has not been challenged. It has not been ascertained if any of the excess ballot papers was in any of the ballot boxes assigned to the Respondent No. 3. This part of the issue accordingly requires no consideration.

The next part of this issue raises the question that the result of the election has been materially affected for not opening certain polling booths at the notified hour and not keeping them open for the statutory period. Section 56 of the Representation of the People Act, 1951 lays down that "the appropriate authority shall fix the hours during which the poll will be taken; and the hours so fixed shall be published in such a manner as may be prescribed;

Provided that the total period allotted on any one day for polling at an election in a constituency shall not be less than 8 hours."

Rule 16 of the Representation of the People (Conduct of Election and Election Petitions) Rules, 1951 directs publication of the hours fixed for polling under section 56 in the official Gazette and in such other manner as the Election Commission may direct. The polling hours for Burtolla Assembly Constituency, as notified, appears from the official document, Ext. 10, as follows:—

"8 A.M. to 5 P.M. with an interval of rest from 12 NOON to 1 P.M."

Under Rule 17(2) the Presiding Officer shall close the polling station at the hour fixed in that behalf under section 56 and shall not admit thereto any elector after that hour;

Provided that all electors present within the Polling Station before it is so closed shall be entitled to have their votes recorded. The Election Commission issued instructions in regard to the hours of polling in an enclosure to the Election Commission's letter No. 118/52-Elect-1, dated 16th January 1952 to the following effect:—

Instruction No. (8).—"Sometimes, on account of unavoidable reasons or even incompetence or unpunctuality of Presiding Officers or Polling Officers, polling is reported not to have been commenced at the proper hour. This should be avoided by all means. If, however, it happens that polling has, in fact, commenced later than the scheduled hour, the Presiding Officer should continue the polling until the hour fixed for close of poll, and if this does not give the normal full period of polling, he should allow polling to continue until such point of time when such full period of polling would be completed. Voters present at the polling station at such adjourned closing hour and waiting to cast their votes should be allowed an opportunity to cast their votes." The instruction to allow polling to continue for the normal full period was necessitated by the express proviso to section 56 to the effect that the total period allotted on any one day for polling shall not be less than 8 hours. Such instructions have statutory sanction under Art. 324(1) of the Constitution, the Election Commission being vested by the said Article with powers of superintendence, direction and control of elections.

In para. 13 of the Election Petition a list of booths which were opened late as alleged, has been given. We have compared this list with the reports of the Presiding Officers regarding the opening and closing time of the polling stations, marked as Ext. 34 in this case. Several booths were opened late but they were closed at 5 P.M. We give below a table showing the numbers of such polling booths, the hours of opening and closing of those booths, number of votes polled in each booth and the total number of voters allotted to each of these booths—

No. of Polling Booth.	Hour of opening.	Hour of closing	Votes polled	Total Voters
1 A	8-15 A.M.	5 P.M.	263	835
1 B	8-15 A.M.	5 P.M.	246	786
2 A	8-15 A.M.	5 P.M.	580	743
2 A	8-15 A.M.	5 P.M.		
4 A	8-30 A.M.	5 P.M.	414	891
4 B	8-30 A.M.	5 P.M.	341	734
4 C	8-30 A.M.	5 P.M.	362	807
6 A	8-25 A.M.	5 P.M.	346	814
12 A	9 A.M.	5 P.M.	306	769
12 A	9 A.M.	5 P.M.	345	782
12 C	9 A.M.	5 P.M.	371	826
15 B	9 A.M.	5 P.M.	290	658

N.B.—(The Presiding Officer of Booth Nos. 2A and 2B prepared a consolidated return for the two booths giving the total number of votes polled as 580 instead of giving the numbers of votes polled in each of those two booths separately).

The Presiding Officers of the above booths did not carry out the directions of the Election Commission apparently, as they closed the booths at 5 P.M. though the polling started late. It is not disputed that interval of rest for one hour from 12 noon to 1 P.M. was observed and the polling did not take place during the recess period. Hence the polling did not continue for a total period of 8 hours

in any of those booths and there was violation of the express provision in the statute. We cannot but condemn too strongly such laxity on the part of the Presiding Officers and Polling Officers. They failed to perform this most essential and sacred part of their duty entrusted to them, properly. It should be impressed on officers entrusted to perform such duties that such violation of the express provision of law may avoid elections causing a great deal of harassment and entailing unnecessary huge expenditure.

The question now is whether such irregularity as late starting of polling can invalidate election. Under Section 100(2) (c) an election can only be declared void if the result of the election has been materially affected by any non-compliance with the provisions of the Act or of any Rules or Orders made under the Act or any other Act or rules relating to the election. The principal point therefore is whether the result of the election has been materially affected on account of late starting of polling in the several booths. References have been made by the learned lawyers of both sides to the several reported cases. In the Moradabad District South-East Rural Mohammadan Constituency Case reported in Sen & Poddar, p. 572, it was held that such irregularities as late starting of polling and continuing the same beyond prescribed time do not by themselves vitiate an election unless the result of the election is materially affected. In Schofield's Parliamentary Election at p. 526 referring to East Kerry 1910 6 O'M & H.85 it has been observed that failing to open the polling station at the proper time by the Presiding Officer by itself was not sufficient to invalidate an election. In the Drogheda case reported in 2 O'M & H. p. 202, late opening of the polling stations was found not to have affected the result of the election and accordingly the election was not declared void. It has been observed that the element of common sense and the reason of the thing has largely to enter into the consideration of the Tribunal. The question has been elaborately discussed in the Municipal Election case of Shyam Chand Basack *vs.* The Chairman of Dacca Municipality, reported in 24 C.W.N. 189, by Sir Ashutosh Mookerjee, J. referring to numerous reported cases and the old law on the subject. It has been decided that the Court will uphold the election if it is satisfied that the result has not been affected by the infringement which actually took place. The question of onus has been discussed and it has been decided that the burden rests upon the party who maintains the validity of the election notwithstanding infraction of the rule to establish that the result of the election has not been materially affected.

Evidence has been adduced in this case by P.W. 22, Garib Mistry, a voter residing at No. 44 Musjid Bari Street within the constituency that he could not cast his vote waiting till 9 A.M. at the Jubilee Institution Booth, Nos. 12A to 12C, on account of late opening and he had to go away to attend to his work. Similar evidence has been adduced by P.W. 23, Hari Sadhan Goswami who also waited till 9 A.M. and had to go away without being able to cast his vote. The booths at the Jubilee Institution were opened at 9 A.M., as will appear from the table. On a comparison of the number of votes polled and the number of electors who were allotted to the different polling booths, it will appear that in none of the booths even 50 per cent of the votes were polled and in certain booths the number of votes polled was less than 33 per cent. In view of such fact it is impossible to affirm that the result of the election has not been in fact, affected by the irregularity. In similar circumstances Sir Ashutosh Mookerjee, J. declared the Municipal election, in the case reported in 24 C.W.N., 189, illegal and void. It was observed at page 194 of the report that "as soon as the irregularity was established, the burden should have been thrown upon the defendants to establish that the result of election has not in fact been materially affected." In the present case the onus which lies on the Respondent remains un rebutted. It has been argued by the learned Counsel for the Respondent No. 3 referring to certain cases that non-compliance with the statutory rules was not infraction of a mandatory but only a directory provision of law and, as such, the election cannot be set aside on such grounds. It is well settled that infringement of the rule alone is not sufficient to vitiate an election, as has already been observed. The determining factor is whether the result of the election has been materially affected and every case is to be judged regard being had to its special circumstances. In the case before us there was difference of only 92 votes between the two principal contestants. Large number of votes were not polled. Evidence has been adduced that certain voters who intended to cast their votes in favour of Respondent No. 8, Sudhir Chandra Roy Choudhury, did not get any opportunity. It is not necessary to consider the question for whom the electors who were deprived of the opportunity to cast votes, would actually vote for. When such a large number of electors did not vote it cannot but be held that the result of the election has in fact been affected materially. We therefore hold that the non-compliance of the

provision of law by starting the polling late and not continuing for the full statutory period is a good ground for declaring the election void.

The last part of the Issue No. 5 refers to refusal to allow certain voters to register their votes in Polling Booth No. 29-B. It appears from page 4 of Ext. 10, in which the extent of polling booths has been described, that the voters of No. 80 and 81, Durga Charan Mitra Street were not allotted to Matri Jati Sevak Samity High School booths at 83/C, Durga Charan Mitra Street. The number of voters in these two premises appears to be 36 from the Electoral Roll Ext. 44. In the last page of Ext. 10 under Polling Station No. 29 having two booths Nos. 29-A and 29-B, there is a note to the following effect "Any other road, street, lane, bye-lane or portion thereof in the constituency not included in any of the Polling Station above". Evidently it was intended that the electors residing at Nos. 80 and 81, Durga Charan Mitra Street, were to cast their votes at any of the booths at Station No. 29. As a matter of fact one complete set of Electoral Roll of Burtolla Constituency was supplied to the Presiding Officer of Polling Booth No. 29-B *vide* Ext. 33, last sheet. The articles required for use in the polling station were described in the printed list contained in Ext. 33. The entry relating to the supply of one complete set of Electoral Roll of Burtolla Constituency in addition to the sets of electoral rolls supplied in ordinary course to the presiding officer of the station, was written evidently at the time of delivering the articles to the receiving officer. The learned Counsel for the petitioner, Mr. N. R. Das Gupta suspects that the said entry may be an interpolation. There is hardly any reason to think so. The additional copy of Electoral Roll of the entire constituency appears to have been supplied in view of the note in the last page of Ext. 10 referred to above, for use in case of appearance of any residuary voter who was to cast his vote at Booth No. 29-B. The main contention is, that the residuary voters like those residing at 80 and 81, Durga Charan Mitra Street were refused the opportunity to register their votes at Booth No. 29-B illegally and in contravention of the definite directions that can be gathered from the documents and as such there was material irregularity vitiating the election. Evidence has been adduced that the electors of premises No. 80 Durga Charan Mitra Street could not cast their votes in either of the Booths Nos. 29-A and 29-B at Station No. 29 and there was refusal to allow certain voters to exercise their right of franchise when they actually went to vote for Respondent No. 8 Sudhir Chandra Roy Chaudhury. P.W. 19, Aruna Rani Das, a nurse, who is a voter residing at No. 80, Durga Charan Mitra Street, deposes to the fact that she accompanied by 15 or 16 other male and female voters residing at the said premises, first went to Matri Jati Sevak Samity School booths at Durga Charan Mitra Street, but they were directed to go to Peary Mohon Sur Lane booths i.e. Booth Nos. 29-A and 29-B. She adds that all of them accompanied P.W. 21, Bejoy Chandra Seal to Peary Mohon Sur Lane booths but the polling officer of both Booths Nos. 29-A and 29-B refused to register their votes intimating that their votes would not be taken in those booths. Those voters had to come away disappointed. Aruna Rani Das P.W. 19, says that the whole party intended to cast votes in favour of Sudhir Chandra Roy Chaudhury. Bejoy Chandra Seal, P.W. 21, saw in the hands of the said voters cards of Sudhir Chandra Roy Chaudhury bearing the symbol of "Hut".

Under rule 23(2) of the Representation of the People (Conduct of Election and Election Petitions) Rules, 1951, it is the duty of the polling officer to prepare marked copy of electoral roll showing the number of the ballot papers supplied to each elector. Under Rule 32 the said marked copy of electoral roll must be sent by the presiding officer in a separate sealed packet. It has been enjoined by rule 52 that such "marked copy of the electoral roll shall not be opened and their contents shall not be inspected by, or produced before, any person or authority except under the order of a Competent Court or of a Tribunal". The sealed packet containing the marked copies of Electoral Rolls of Booth No. 29-B was opened before the Tribunal in the presence of the lawyers of all parties. There is no marked copy of electoral roll of residuary voters whose names do not appear in the lists specifically allotted to that particular booth, but would appear in a different place in the complete set of Electoral Roll of the Constituency. The complete set of Electoral Roll which was supplied to that booth was not returned as a marked copy of the electoral roll evidently implying thereby that no vote of residuary voters was received at that booth. From the evidence of P.W. 28, Tajendra Kumar Sarkar, an employee of the Returning Officer establishment we get that the unmarked copies of the electoral rolls which were not sent in sealed packets were not systematically arranged booth by booth, but were kept in a heap and no account was kept of such returned papers. It is not possible to ascertain if the complete copy of the electoral roll of Burtolla Constituency supplied to the Presiding Officer of Booth No. 29-B was actually returned, but it can very well be inferred that it remained unmarked and so it was not enclosed in the sealed packet. The only reasonable inference that follows is, that no vote of any residuary voter was registered at Booth No. 29-B. In the presence of the lawyers

of all parties the packet containing the ballot papers found in the ballot box of the returned candidate Nirmal Chandra De at Booth No. 29-B, was opened and the ballot paper numbers were compared with those noted in the marked copies of the electoral rolls and they were found to agree. There is no ballot paper of any residuary voter in the packet—vide Report Ext. K. This verification further supports our inference. We see no reason to reject the evidence of P.W. 10, Aruna Rani Das, which is corroborated by P.W. 21 Bejoy Chandra Seal. After carefully considering the facts, circumstances and the evidence we conclude that there was refusal to record votes of certain registered electors. The electors have the statutory rights to cast their votes. Opportunity must be given according to law to exercise their right of franchise. Denial of such opportunity is certainly a grave irregularity amounting to infraction of the rules relating to the election. The officers of polling Booth No. 29-B were either not properly instructed or they shirked their duties and responsibilities acting most injudiciously and thereby giving rise to serious complications, harassments and consequent unnecessary expenses. The margin of difference between the number of votes secured by the returned candidate Nirmal Chandra De and his next rival Sudhir Chandra Roy Chaudhury, was small. This infraction of the rules coupled with the non-compliance with the provisions of law on account of starting the polling late and not continuing for the statutory period as already found by us, materially affected the result of the election more seriously. In this view of the case we hold that the election should be set aside. Accordingly under Section 100(2)(c) of the Representation of the People Act, 1951, the decision of the Tribunal is that the election of the returned candidate Nirmal Chandra De must be declared void.

4th Issue.—There are allegations of undue influence, coercion and intimidation by the returned candidate Nirmal Chandra De or by his alleged supporters or agents on the Non-Bengali employees of the Calcutta Corporation, who are all electors and are said to have voted for the said Congress candidate Nirmal Chandra De. The question that corrupt practice of undue influence extensively prevailed at the election, raised in Issue No. 2 has been given up. The case is now restricted to the Non-Bengali voters residing at 72/1, Grey Street, who are all mozdooers, coolies, drivers and Sardars of Calcutta Corporation Gowkhana and North Garage of the Motor Vehicles Department. A long story has been said implicating the Chief Engineer of the Calcutta Corporation Shri Dwijendra Nath Ganguly who has been examined as witness No 3 for the Respondent. The respondent No. 8 Sudhir Chandra Roy Chaudhury for whose interest this election is being challenged, is Ex-Mayor of the Calcutta Corporation. The background of this case seems to be a strong feeling, far from being friendly, between the Ex-Mayor and the Chief Engineer. R.W. 3 Dwijendra Nath Ganguly still claims the Ex-Mayor Sudhir Chandra Roy Chaudhury as his friend for whom he has great respect. Under stress of cross-examination he had to admit that one of the main issues for resigning his Mayoralty by Sudhir Chandra Roy Chaudhury was his appointment as the Chief Engineer of the Calcutta Corporation. The chapter of dark history of the activities of the responsible officers of the Calcutta Corporation which was placed before an Investigation Commission with Hon'ble Shri C. C. Biswas as Chairman and ventilated in newspapers, has been revealed. The facts disclosed in the searching cross-examination, to which the learned Counsel Mr. N. R. Das Gupta subjected the Chief Engineer, have except for the purpose of establishing why the Chief Engineer would hold the Congress candidate Nirmal Chandra De against his formidable rival Sudhir Chandra Roy Chaudhury, hardly any other relevancy. It is not at all necessary for the purpose of this case to go into details of the said evidence. It is not made a secret of the fact by the learned Counsel for the petitioner that the defeated candidate Sudhir Chandra Roy Chaudhury is fighting setting up Sudhansu Sekhar Ghosh as the petitioner. For all intents and purposes Sudhansu Sekhar Ghosh is only a 'bonamdar' of Sudhir Chandra Roy Chaudhury in this case. The evidence of the petitioner, Sudhansu Sekhar Ghosh, which is described by the learned Counsel for the Respondent No. 3, Mr. T. P. Das as mile-post evidence, has not much intrinsic value. He is a Licensed Plumber of the Calcutta Corporation and claims to be a Sanitary Engineer as well. Admittedly he was in good grace of the Chief Engineer, Sri Dwijendra Nath Ganguly. The petitioner got work on occasions through the Chief Engineer and it cannot be denied that he rendered personal services to the Chief Engineer and his family on occasions, e.g., taking clothes for washing to the Laundry shop, attending to the ailing mother of the Chief Engineer when the latter went to Darjeeling for some duty and so on. The petitioner claims that he was a great friend of the Chief Engineer and the latter had great respect and admiration for him as he was successful in bringing about peace amongst the Corporation mozdooers and the Corporation authorities and for rendering various services in the formation of the Calcutta Corporation Karmi Sangha with the said Chief Engineer, Sri Dwijendra Nath Ganguly, as its President and R.W. 4 Manik Ram as its Secretary. The claim for such intimacy which is emphatically denied by the Chief Engineer, was made to establish the possibility of his knowledge about the Chief Engineer's taking

part in the election campaign of the Congress candidate Nirmal Chandra De. Such evidence regarding the claim of intimacy cannot possibly be accepted at its face value considering the difference of position between the Chief Engineer of the Calcutta Corporation and a Plumber seeking his patronage. The story about establishing peace amongst the Corporation mazdoors and Corporation authorities through the intervention of the Petitioner, Sudhansu Sekhar Ghosh hardly deserves any notice in the absence of any evidence worth the name on the point. The evidence regarding the services rendered by the petitioner in the formation of the Calcutta Corporation Karmi Sangha cannot stand the test of any scrutiny. The allegation that the Chief Engineer Sri Dwijendra Nath Ganguly took much interest in the formation of the Karmi Sangha and became its first President has not also been established by any reliable evidence. Hence, the reasons given for having intimacy with Dwijendra Nath Ganguly as a great friend is wholly unacceptable. Of course, the Chief Engineer Sri Dwijendra Nath Ganguly goes to the other extreme and describes the Petitioner Sudhansu Sekhar Ghosh who used to frequent his place evidently for seeking patronage, as a "hand-washing hanger-on", apparently conveying some sort of contemptuous attitude. Under stress of cross-examination Sriyat Ganguly had to admit that he regarded Sudhansu Sekhar Ghosh as a respectable and reliable gentleman. He says that he severed his connections with Sudhansu Sekhar Ghosh after his return from England in the latter part of November 1951, on account of some trouble in getting back the clothes of his son delivered by the Petitioner to a Chinese Dyeing-Cleaning shop.

Mr. T. P. Das, the learned Counsel for the Respondent No. 3 argues that the approach to a man of the position of the Chief Engineer of the Calcutta Corporation by the Congress candidate in the manner alleged and the story of the part alleged to have been played by the said Chief Engineer, are rather fantastic and cannot stand any test of scrutiny. According to him if the Congress sought the support of the Chief Engineer to secure the votes of the Corporation mazdoors for the Congress candidate, Nirmal Chandra De could not be sent practically on the eve of election on 17th January 1952 with the request to force the Corporation employees residing at 72/1, Grey Street, to vote for the said Nirmal Chandra De; and even if such an approach had been made, the Chief Engineer could not personally proceed at once to 72/1, Grey Street and ask such subordinates as the Garage Foreman Ram Chandra Banerjee, the driver Nanda Dulal De, the coolie Sardar Bipath Rajwar and others of similar status personally to support the Congress candidate Nirmal Chandra De, exercising their influences over the mazdoors and also ask to threaten the mazdoors with dire consequences if they refused to vote for the Congress candidate. The Chief Engineer is the head of the Department. There are other grades of officers under him, namely, the Deputy Chief Engineer and the Garage Superintendent, above the Garage Foreman Ram Chandra Banerjee. It is not at all likely that the Chief Engineer would at once take so much interest that he would run forthwith to 72/1, Grey Street with Nirmal Chandra De taking the Petitioner Sudhansu Sekhar Ghosh with him. The Petitioner Sudhansu Sekhar Ghosh who poses to be a very public-spirited citizen anxious to vindicate the right of the electors accompanied Sri Dwijendra Nath Ganguly to 72/1, Grey Street on 17th January morning, but did not take any further interest subsequent to that. He again started taking interest from the day previous to the date of polling by watching movements of Non-Bengali electors towards several booths and from the morning of the day of polling making enquiries about the corrupt and illegal practices resorted to for the benefit of the Congress candidate. Such story is not at all consistent with natural and probable human conduct. It has been argued by the learned Counsel for the Respondent that if the Congress approached the Chief Engineer for support, his activities would not be restricted to 72/1, Grey Street alone but would have extended to other places like Sonagachi etc. where also Corporation mazdoors reside. In this case the returned candidate Nirmal Chandra De, Respondent No. 3 does not examine himself. Mr. T. P. Das argues that the trial of election petition is of the nature of a criminal trial and the standard of evidence required to establish the charges of corrupt and illegal practices should be like that in a criminal case, and as such it is not necessary for the Respondent who stands in the position of an accused in a criminal case to adduce any evidence. References in this connection have been made to the following reported cases, namely:

Bhalwal Mohammedan Constituency case in which it was held that the standard of proof required to establish a charge of personation at an election trial is the same as that in a criminal case.

Deragazi Khan Case, reported in Sen & Poddar 275, where it was held that the charge of bribery is a criminal charge and the evidence required to prove it should not fall short of the evidence required to prove a criminal charge.

Lyallpur Mohammedan Constituency Case, reported in Sen & Poddar, 526, in which it was held that the standard of proof required in the matter of corrupt practices is the same as that in the case of a criminal charge.

South East Gujrat Mohammedan Constituency Case reported in Sen & Poddar, 764, in which it was laid down that the standard of proof required to establish undue influence is the same as in a criminal case.

Contrary view was taken in the Municipal Election Case, Nasiruddin Ahmed Vs. Haji Muhammad Yusuf reported in 40 C.W.M. 741, referring to other English cases to the effect that allegations of corrupt practices are not in the nature of criminal charges and therefore trial of an election petition is not governed by the rules applicable to a criminal case.

In the Norwich Case reported in 1 O'M&H 8(10) Baron Martin J. observed, "I am not trying a criminal case, I am trying a civil case, and the rules applicable to a civil case are, I apprehend, the rules applicable to this case".

Mr. N. R. Das Gupta, Counsel for the Petitioner, refers to the provisions in the sections of the Representation of the People Act 1951 which correspond to the provisions in the Civil Procedure Code and argues with good reasons that the trial of an election petition is essentially a civil trial and the procedure must be similar as in a civil case. As regards standard of proof there can be no difference as the standard laid down in the Indian Evidence Act regarding proof of facts must be followed in every trial, civil or criminal.

It cannot be upheld as has been argued by the learned Counsel for the Respondent that no onus lies on the Respondent in an election case. In an election petition there is only a claim for declaration whether an election offence has been committed or not. There does not arise any question of prosecution. Prosecution may follow, if necessary, after the trial of an election. The petitioner is, however, in an election case bound to establish the charges brought by him, to have the election set aside.

In connection with this Issue petitioner is to establish that on account of undue influence, coercion or intimidation electors of 72/1, Grey Street, or other electors were compelled to vote for the Congress candidate Nirmal Chandra De. There is no direct evidence that any particular elector who intended to vote otherwise, voted for the Congress candidate on account of such corrupt practices. Attempt has been made to prove that meetings were held at 72/1, Grey Street on 18th onwards upto 21st January, evening where the mozdooers were threatened that if they did not vote for the Congress candidate they would be put to various troubles, namely, their services would be terminated, their ration cards would be seized and they would not be allowed to leave for their native places; on the other hand if they voted for the Congress candidate their service conditions would be improved, temporary hands would be made permanent, residential quarters would be improved and facilities would be given with regard to electricity and water connections at their premises. Unless it is proved that in fact on account of such threats and promises any elector was actually influenced to vote for the Congress candidate, the charge cannot be said to have been established. On this point evidence has been adduced by P.W. 1 Sudhansu Sekhar Ghosh, P.W. 6 Chamari Hazam, P.W. 7 Genelal Singh and P.W. 12 Muzaffur Ahmed. P.W. 1 Sudhansu Sekhar Ghosh was not present in any meeting but on the morning of 17th January he accompanied Sri Dwijendra Nath Ganguly and Nirmal Chandra De to 72/1, Grey Street, when the Chief Engineer gave the instructions to Ramchandra Bannerjee and others. As has been observed his evidence deserves very little credit on account of improbable circumstances. The other witnesses, Chamari Hazam, Genelal Singh and Muzaffur Ahmed make a general statement that in the meeting held at 72/1, Grey Street 3 or 4 days before the election, the Congress candidate Nirmal Chandra De was present and he was introduced by the Chief Engineer Dwijendra Nath Ganguly and that meeting of the mozdooers was addressed by Dwijendra Nath Ganguly himself, Ram Chandra Banerjee, Nanda Dulal De and Hironmoy Shome Chaudhuri, giving the alleged threats and holding out the promises in case the mozdooers supported the Congress candidate. P.W. 6 Chamari Hazam comes to say that he attended all the 3 meetings held on 18th, 19th and 21st January and attempts to prove further that Nanda Dulal Babu and Bipath Rajwar (polling agents of the Congress candidate) wrote out the names of coolies etc. on the cards issued by the Congress consulting Attendance Registers and instructed the coolies to vote according to directions giving to them and the coolies were asked to give their names as instructed even if their real names were not such. He adds that during the third meeting the Chief Engineer went away on some urgent business after warning the coolies that they must vote for the Congress candidate as instructed. P.W. 7 Genelal Singh also says about the

three meetings held on 18th, 19th and 21st January in which Ramchandra Babu, Nanda Dulal Babu, Hiranmoy Babu, Pairu, Bansl, Sachu and Chief Engineer Dwijen Babu gave speeches on the different dates. He also adds that in the third meeting the Chief Engineer stated that he would be able to know how the votes were cast as Nanda Dulal Babu and Bipath Rajwar would watch the movements of the voters in the polling booth. P.W. 12 Muzaffar Ahmed says that he attended the first meeting on 18th and the third meeting on the day before the date of polling. He also repeats the story of the warning given by the Chief Engineer about watching the movements of the voters at the polling booth. Such general evidence which can only be acceptable after taking good deal of caution does not very much advance the case of the petitioner in the absence of any proof that any elector did, as a matter of fact, obey the instructions. Regarding the story of watching the movement of the voters in the polling booth P.W. 6, Chamari Hazam comes to say that within the polling booth Nanda Babu was sitting by the side of a black screen facing it, which was hung about a cubit above the floor and was observing the movement of the legs of the voters, through the gap. P.W. 2 Nanda Dulal De denies the fact that there was a gap between the curtain and the floor through which legs of the voters were visible. On the other hand, according to him a thick black Purdah was hung up, which extended upto the floor in order to prevent anybody from seeing anything happening on the other side of the Purdah. This witness Chamari Hazam adds that while he came out after casting his vote Nanda Dulal Babu enquired for whom he voted but he replied that he voted for the man whom he liked. It has been rightly contended by the learned Counsel for the Respondent that such enquiry by Nanda Dulal De could not be possible in ordinary course. The witness's refusal to say for whom he voted may be interpreted that he was not unduly influenced by the alleged threats, although he comes to support the Petitioner's case. Father of this witness, Mushon Hazam was given a coat by the Chief Engineer Sri Dwijendra Nath Ganguly admittedly. The Chief Engineer says that he made a present of the coat after his return from England, as when he was given an address of welcome the oldest collic Sardar Mushon Hazam, trembling in bitter cold wanted from him some warm clothing. That Mushon Hazam was given the coat in order to exercise his influence over the coolies, is a mere suggestion which is not proved by any reliable evidence. Mushon Hazam is said to have gone home and he is not examined as a witness.

Now, R.W. 3 Dwijendra Nath Ganguly denies all the allegations made against him and the story of his supporting the candidature of Nirmal Chandra De, addressing meetings at 72/1, Grey Street. He admits that Nirmal Chandra De came to him for the first time in the first week of January 1952 in his office to seek permission to allow his agents to approach the voters at 72/1, Grey Street. He denies all other alleged supports given by him to Nirmal Chandra De.

We do not deem it necessary to discuss in details the voluminous evidence given vaguely on petitioner's side in general terms, which cannot definitely establish that any particular voter was, in fact, unduly influenced on account of any coercion or intimidation.

The Corporation Mazdoors have their Union. They express their grievances in meetings and by processions as the evidence discloses. They resorted to strikes. Whether the Chief Engineer could agree to influence such Mazdoors by threats and persuasions as alleged, is a matter which cannot be left out of consideration.

On the respondent's side besides the Chief Engineer Sri Dwijendra Nath Ganguly who is the main target of attack in connection with the plea of corrupt practices, two other material witnesses, R.W. 2 Nanda Dulal De and R.W. 4 Manik Ram have been examined among the persons named by the Petitioner as accomplices to the act of interference with the free electoral rights of the Mazdoor voters of 72/1, Grey Street. As we have already noticed that the returned candidate, who is vitally concerned, does not come forward to take oath. He seems indifferent so far as the proceedings during trial. The election was fought on party lines. Respondent No. 10, Aparash Bhattacharya who was a dummy Congress candidate, as alleged, has watched the proceedings, but has not examined himself. Chief Engineer's evidence has been very much adversely criticised by Mr. N. R. Das Gupta, Counsel, questioning his veracity in view of a sort of stoic indifference he attempted to exhibit in connection with the election matters. However much he might have been interested in the Congress Election affairs, and whatever influence he might have exercised, it cannot, in our opinion, be inferred from the evidence that he helped the returned candidate Nirmal Chandra De resorting to corrupt practices. We do not accordingly deem it necessary to discuss his evidence further as the nature of the allegations made to establish his complicity appear improbable to us. On the day of polling certain activities of

the Chief Engineer have been alleged. From his evidence it transpires that he passed by the Grey Street Booth on the morning of the polling day. Petitioners case is that he stopped his car in front of the booth, met the Polling Agents and warned the voters who were standing in a queue. The Chief Engineer denies such allegations. He says that he was going to District Engineer to give necessary instructions regarding lorries requisitioned by the Police for election work. P.W. 20, Amulya Kumar Sarkar, a pleader, says that he saw the Chief Engineer to stop in front of the booth and to make enquiries how the polling was going on and if previous instructions were being followed. If this evidence be accepted at its face value, there can be no inference of illegal interference with the free exercise of electoral rights.

The Polling Agent, R.W. 2, Nanda Dulal De is the brother-in-law of Nirmal Chandra De, the returned candidate. He specifically denies all the allegations made against him. His evidence regarding the possibility of seeing movements of the voters inside the polling booth has been already discussed. Of course, the alleged warnings to voters about watching of movement in polling booth by Nanda Dulal De, prior to the date of polling when nobody was aware of the arrangement in the booth, seem to be a cock and bull story. The alleged indifference of Nanda Dulal De in the matter of canvassing for his brother-in-law, may not be acceptable to any body having common intelligence, but that cannot very much help to prove the definite case of effective corrupt practices as alleged. The other Polling Agent, Bipath Rajwar has not been examined. Nanda Dulal De asserts that Bipath Rajwar was to act as his relieving Polling Agent, but he did not turn up at all. This fact was not, however, disclosed in the written statement. It is interesting to note that the Chief Engineer first said in examination-in-chief that he would not be able to identify Bipath Rajwar and did not remember to have seen him even, but in cross-examination he had to admit that he met Bipath Rajwar at the house of the Respondent's lawyer. There is, of course, no denial by Bipath Rajwar of the part alleged to have been played by him.

The other material witness is Manik Ram (R.W. 4). He is the Secretary of Karmi Sangha and as such has much hold over the Mozdoors. He denies any connection of the Petitioner, Sudhansu Sekhar Ghosh with Karmi Sangha. When cornered in cross-examination with the receipt books of Karmi Sangha, an unused copy of which has been produced by the petitioner, he makes certain prevaricating statements no doubt. The value of his evidence is indeed shaken on account of such statements, but that cannot very much improve petitioner's case. The other material witnesses, namely, Ram Chandra Bannerjee and Hironmoy Shome Chaudhuri, have not also been examined. R.W. 1, Kabindra Nath Tagore, a Congress worker is examined to say that he instructed the Polling Agents of the Congress candidate, Nirmal Chandra De as to their duties and warned them not to resort to any unfair practice.

However, considering the circumstances, probabilities and the evidence, already discussed, the Tribunal cannot hold that the election of the returned candidate, Nirmal Chandra De was void by reason that coercion and intimidation had been exercised or resorted to, by the said returned candidate Nirmal Chandra De, Respondent No. 3 or by his agents or any other person or with his or his agents connivance, and that there had been interference with the free exercise of electoral right of any voter.

3rd Issue.—This Issue relates to personation votes. Corrupt practices of procuring ballot papers by false personation to cast votes in the names of dead, absentee and fictitious electors, have been alleged and evidence has been led to prove such allegations to some extent. In the Election Petition several Annexures have been given showing the names of different categories of such registered voters alleging that on their behalf false votes were cast by others in favour of the returned candidate, Nirmal Chandra De who or whose agents had connivance in the matter.

Annexure A gives the names of 26 registered voters who are said to have been dead before 22nd January 1952, i.e. the date of polling.

Annexure B, part I mentions the names of 72 persons registered as voters residing at different addresses who could not be traced or found in Calcutta at all, before and on the date of the election, i.e. 22nd January 1952. These are alleged to be fictitious voters.

Annexure B, part II contains the names of 27 electors who were absent from Calcutta on 22nd January 1952, but votes in their names were registered in favour of the Respondent No. 3, Nirmal Chandra De.

Annexure B, part III includes the names of 22 voters who could not possibly cast their votes at all as some other persons had already given votes in their names before they went to their respective booths to exercise their right of franchise.

In Annexure 'C' names of 5 voters who resided at 72/1, Grey Street but died long before the day of polling, as alleged, have been separately described with special reference to Paragraph 11, Sub-paragraph (r) of the Election Petition.

In Annexure 'D', part I a separate list of 77 voters who were described as residents of 72/1, Grey Street, Calcutta, in the Electoral Roll, but who in spite of diligent enquiries and searches could not be traced or found in Calcutta, at all, before and on the date of the said election i.e., 22nd January 1952 and votes were nevertheless cast in favour of the Respondent Nirmal Chandra De in their names by other persons, has been given.

Annexure 'D', part II gives the names of 2 voters who were Corporation employees but were dismissed for long absence before 22nd January 1952 and were said to be away from Calcutta on the relevant date.

Annexure 'D', part III contains names of 3 voters who were Corporation employees residing at 72/1, Grey Street, but left for their native places on leave and were absent from Calcutta on 22nd January, 1952.

Lastly Annexure 'D', part IV gives the names of 8 voters residing at 72/1, Grey Street, who, it is alleged, could not possibly cast their votes at all at their respective booths, as other persons already gave votes in their names before they went to their respective booths.

In the different parts of Annexure 'D' the names of voters of 72/1, Grey Street have been separately mentioned as attempt has been made to establish the case of undue influence, intimidation and coercion, as also of tutoring the residents of the said premises, many of whom are voters. In the previous Annexures general lists of such classes of voters registered as residents of different other premises have been mentioned.

Before discussing the case of each of the individual vote mentioned in the several annexures, we will consider the question of connivance of the returned candidate Nirmal Chandra De or his agents. In respect of the voters of 72/1, Grey Street some attempt has been made to adduce evidence through P.W. 6, Chamari Hazam, P.W. 7, Genelal Singh and P.W. 8, Ganendra Nath Ghose. P.W. 6, Chamari Hazam says in his evidence already referred that the Polling Agents, Nanda Dulal De and Bipath Rajwar wrote the names of the coolies etc. on the cards issued by the Congress consulting the Attendance Registers and gave instructions to the coolies to cast votes even when they stated that their names did not agree, assuring them that there would be no trouble as they would wait in the polling booth.

The evidence of P.W. 7, Genelal Singh is that one or two days prior to the election Nanda Dulal De and Bipath Rajwar gave instructions to the Mozdoors regarding the father's names and the names of voters that they should state. P.W. 8, Ganendra Nath Ghose says about instructions given by Nanda Dulal De to one coolie to give his name as 'Barham' though his name was different. Such evidence to prove the connivance of Nirmal Chandra De on account of alleged acts of Polling Agents, Nanda Dulal De and Bipath Rajwar, hardly stand any test of scrutiny. Nanda Dulal De has given his denial. There is no further evidence to prove any connivance in respect of the voters of 72/1, Grey Street. No direct evidence has been adduced examining any of the alleged voters.

As regards canvassing for votes at 32, Gorachand Bose Road, P.W. 24, Felaram Ghosh states in his evidence that he noticed the Congress candidate Nirmal Chandra De in the bustee at Gorachand Bose Road while he was talking with one Buddhu Ram who attempted to support the Congress candidate by all means, fair and foul. Such evidence cannot establish the connivance of the Respondent No. 3, Nirmal Chandra De or any of his agents in any major corrupt practice.

The Petitioner has attempted to make out a case of major corrupt practice under Section 123(3) of the Representation of the People Act, 1951. Even if it be established that there was some corrupt practice, no case for avoiding the election will stand in the absence of satisfactory proof of connivance of the candidate or his agents. If however it be found that there was some corrupt practice, but that was done by a person who is not a candidate or his agent, the election cannot be set aside as that will be a minor corrupt practice within the meaning of Section 124(1) of the Representation of the People Act, 1951. Evidence has been adduced in this connection on the Respondent's side by R.W. 1, Kabindra Nath Tagore, a Congress worker that on behalf of the Congress candidate, Nirmal Chandra De, he gave definite instructions to the Polling Agents of Nirmal Chandra De not to

resort to any corrupt practice in order to secure votes. R.W. 2, Nanda Dulal De corroborates him. The fact that Nanda Dulal De as Polling Agent was present at Polling Booth No. 11A when voters went to cast votes cannot by itself establish any connivance to false votings, as contended. In view of the evidence we hold that there was no major corrupt practice in this case even if it be proved that there were personation votes by others.

We will now consider whether there were any of the alleged corrupt practices. The alleged personation votes have been classified into three categories:—

- (a) Votes in the names of dead persons,
- (b) Votes in the names of absentee electors, and
- (c) Votes in the names of fictitious electors,

i.e. in the names of persons registered in the Electoral Rolls but were not in the addresses mentioned therein before or during the election.

In the Election Petition long lists of impersonated votes have been given. After the closing of the evidence of both parties, scrutiny was held in the presence of the lawyers of all parties comparing the numbers of ballot papers found in the ballot boxes of Nirmal Chandra De which were assigned to him in Booth Nos. 11-A, 28-A, 27-C, 17-C, 12-A and 13-B, with the marked copies of the Electoral Rolls of the said booths. The learned Counsels for the Petitioner restricted the case to a fresh list of impersonation votes, giving up several cases mentioned in the Annexures to the Election Petition. Comparison was made with that new list to ascertain what votes were registered in the names of the alleged different categories of persons in favour of the Congress candidate, Nirmal Chandra De. The result of the scrutiny has been shown in the new list supplied by the learned Counsel for the Petitioner, and has been marked as Ext. 48, which has now become the basis of the Petitioner's case on this point.

None of the alleged absentee electors has been examined. In the long list of witnesses cited on the respondent's side names of the alleged absentee and fictitious voters appear, but they have not been produced before the Tribunal by the Respondent No. 3. The onus lies on the Petitioner to prove that the alleged absentee voters did not actually cast their votes. Direct evidence is not available. Let us now look to the evidence adduced in respect of the alleged different categories of voters.

Out of the list of the dead voters, given in Annexure 'C', 4, namely, Dwarik Chamar, Kuleswar Muchi, Tuna Rajwar and Darogi Rajwar have been shown in the marked copy of the electoral roll of Booth No. 11-A, to have received ballot papers which have been found in the ballot box of the returned candidate Nirmal Chandra De. All those persons were registered as voters residing at 72/1, Grey Street. In the Electoral Roll the name of the first in the list was recorded as Dwarik Chamar. In his Service-book the name appears as Dwarik Mochi—vide Ext. 27. The Death Certificate, Ext. 13(b), of Dwarik Chamar has been produced. In the Corporation attendance register, Ext. 31, which has of course very little evidentiary value, the name of a substitute was written in place of Dwarik Chamar. P.W. 12, Muzaffar Ahmed said about death of Dwarik Chamar. Considering the evidence we hold that the voter, Dwarik Chamar, was dead at the time of the polling as the date of his death appears as 4th February 1951 in the Death Certificate. This is clearly a personation vote. It cannot be ascertained who impersonated this dead voter, nor there is any evidence that the Respondent or his agent procured this personation vote. Next comes the case of Kuleswar Muchi. There is no Death Certificate of Kuleswar Muchi. His Service-book, Ext. 25Ob, is not initialed by any officer. P.W. 12, Muzaffar Ahmed says that he heard that Kuleswar Mochi died in his village home. P.W. 16, Amalengsu Sen Gupta proves his Service-book in which there is a note without any initial. Kuleswar Muchi went home on leave. The entries in the Service-book, without any initial, cannot be accepted as evidence of any value. In view of the insufficient evidence we cannot hold that there was personation vote so far as Kuleswar Muchi was concerned.

As regards the third man in the list named, Tuna Rajwar there is, of course, no Death Certificate. In his Service-book, Ext. 25(a), there is a note, "Reported dead", with an initial dated 15th December 1952. P.W. 15, Amalengsu Sen Gupta proves that the Service-book was written by him. In the Municipal Attendance Register of January 1952, the name of Tuna Rajwar does not appear. The Audit Register, Ext. 24, shows that no salary was drawn. There is a further note in the Service-book, "Tuna Rajwar has been absenting himself without report since 16th October 1949", with an initial against it. Considering the evidence it can be inferred that Tuna Rajwar was dead at the time of the polling. We therefore find that there was a personation vote in the name of Tuna Rajwar.

The case of Durogi Rajwar is similar to that of Tuna Rajwar. The Service-book, Ext. 25 contains a note, "Reported to be dead", with an initial dated 15th December 1950. There is a previous note of his discharge from service, dated 4th December 1950. P.W. 12, Muzaffar Ahmed says that Durogi Rajwar went home in 1949 before the election and died there. In the Audit Register, Ext. 24 the name of Durogi Rajwar was expunged with a note to the effect, "Discharged by order SM.V. dated 4th December, 1950." His attendance has not been shown in the Attendance Register, Ext. 23. There is, of course, no Death Certificate of Durogi Rajwar. Considering the evidence we accept the Petitioner's case that Durogi Rajwar was dead during the election and there was personation vote in his name.

Then at page 5 of Ext. 48 we get a list of 9 voters in whose names votes were cast in favour of Nirmal Chandra De, who, it is contended were dead on the date of polling. They were residents of the premises Nos. 31, 32 and 33, Gorschand Bose Road.

Gujrati Debi's Death Certificate, Ext. 13(d) has been produced. The date of her death was noted as 7th September, 1951. P.W. 24, Felaram Ghose was present at the time of her death and joined the funeral procession. There is no reason to dis-believe the evidence regarding the death of this voter before the election. Evidently then there was personation vote in her name.

Inrapati Singh who resided at 32, Gorachand Bose Road is said to be dead. No death certificate has been produced. There is only vague evidence of P.W. 24, Felaram Ghose that the man died in 1950, perhaps in April or August. On the basis of such meagre and vague evidence we cannot come to a definite conclusion that this voter was dead and false voting took place.

Jet Ram is another voter who according to P.W. 24, Felaram Ghosh died at his village home, while his father Jhilli Ram was at 32, Gorachand Bose Road. The witness came to know from Jhilli Ram about the death of his son and he says that he attended the Sradh ceremony of Jet Ram performed by his father. Jhilli Ram has not been examined. No death certificate has been produced. On such testimony of Felaram Ghosh alone we cannot hold that Jet Ram was dead on the day of Polling and a false voting in his name took place.

Next, Amrit Kalour is another voter who it is alleged was dead at the material time. There is no Death Certificate; only there is a statement of P.W. 24 Felaram Ghosh that Amrit Kalour died, in his village home 4 or 4½ years ago. Such evidence is not conclusive to prove false voting in the name of Amrit Kalour.

Basanta Khatik is another voter who resided at 32, Gorschand Bose Road. His death certificate is not forthcoming. According to P.W. 24, Felaram Ghosh, Basanta Khatik was run over by a train at Ballygunge Station and he saw the dead body of Basanta Khatik at Sealdah Station. In view of the unchallenged and direct evidence we accept that there was a personation vote in the name of Basanta Khatik.

Khedu Khati was another voter who resided at 32, Gorachand Bose Road. Ext. 13 is his Death Certificate in which his surname is written as "Khatik". The date of death is given as 27th August, 1951. P.W. 24, Felaram Ghosh says that Khedu Khati died in 1951, perhaps in August or September in a drowning accident at Behala. In view of the evidence we accept the case that Khedu Khati died before the election and there was false voting in his name.

Sarabjit Dubey, another resident of 32, Gorachand Bose Road died 5 years ago, according to the evidence of P.W. 24, Felaram Ghosh. Electoral Roll was prepared from April, 1947, so his name could be in Electoral Roll (*vide* Section 21 of the Representation of the People Act, 1950). Felaram Ghosh heard about the death of Sarabjit Dubey from his nephew, who has not been examined. No Death Certificate has been produced, so the evidence is not acceptable. We cannot hold that there was false voting in the name of Sarabjit Dubey in absence of satisfactory evidence.

Tulsiram Kalour was another resident of 32, Gorachand Bose Road in whose name vote was cast in favour of Nirmal Chandra De. He was the landlord of P.W. 24, Felaram Ghosh who saw his dead body and attended his sradh. They lived in the same house. Of course no Death Certificate has been produced. In view of the direct evidence adduced by Felaram Ghosh we hold that there was false voting so far as Tulsiram Kalour was concerned.

Chinu Ram, a resident of 33, Gorachand Bose Road died after the riot in September 1946. P.W. 24, Felaram Ghosh saw his dead body. No Death Certificate has been produced. Of course, his father has not been examined as Felaram says that he has gone home. Considering the direct evidence of Felaram Ghosh we find

that Chinu Ram was dead and there was a personation vote in his name. These are all the cases of alleged votes of dead electors in respect of which evidence has been adduced. The other cases mentioned in the Election-Petition are not pressed. As we have already decided that there was no proof of any complicity or connivance of the candidate or his agents, there was only minor corrupt practices in respect of the recording votes of 8 dead persons for which the returned candidate, Nirmal Chandra De, cannot be held responsible.

At page 5 of Ext. 48 there is name of another alleged dead voter, Ramnandan Chamar, who resided at No. 31, Gorachand Bose Road. It cannot be ascertained in whose favour vote was cast in his name, as in the marked copy of the Electoral Roll the ballot paper number was not noted. The Polling Officer of Booth No. 27-C, one R. N. Bhattacharya appears not to have acted according to the statutory provision enjoining that the ballot paper numbers should be noted in the marked copy of the Electoral Roll—*vide* Rule 23(2) of the Representation of the People Act (Conduct of Election and Election Petition) Rules, 1951. He acted irresponsibly, keeping no record of the ballot papers issued to different voters.

Then comes the long list of voters who, as alleged could not be traced and were not at Calcutta at all material times, described at pages 2, 3, 4, 7, 8, and 9 of Ext. 48. The contention that names of fictitious persons were registered as voters cannot be accepted on the evidence that those persons named in the list were not found at their addresses on the date of Polling or during enquiry by P.W. 12, Muzaffar Ahmed and P.W. 14, Bibhuti Bhusan Bannerjee. Bibhuti Bhusan Bannerjee is the Store Manager of the Calcutta Corporation Ration Shop at 72/1, Grey Street. The Petitioner Sudhansu Sekhar Ghosh complained to him that rations were being drawn on false ration cards and gave a list containing the names of the alleged untraceable voters. The witness, comparing the list, Ext. 21, with Ration Registers and the Ration Cards produced before him during one fortnight, put cross marks in pencil against those who did not turn up to take rations and put notes as "F/D" against names of several persons implying that the fathers' names were different, though the names of the rationees agreed. It cannot be inferred from such evidence which has very little value that those persons mentioned in the list, who formerly resided at the addresses mentioned in the Electoral Roll, did not exist or were absent from Calcutta on the date of Polling. They might not continue to remain at the same addresses where they resided at the time of preparation of the Electoral Roll; they might not continue to serve under the Corporation and their names might not appear in the Ration Registers as rationees of the Corporation Ration Shop, but it is quite possible that they lived elsewhere and served in different places and draw rations from other shops. The evidence which has been adduced cannot exclude the possibility of their existence elsewhere in Calcutta. The cases of the alleged absentee voters and the alleged fictitious voters practically come under the same category. Merely because certain persons were not found in the registered addresses on enquiry by an interested witness cannot lead to a conclusion that such persons did not exist at the time of preparation of the Electoral Roll which took place long ago. We do not consider it necessary to discuss in details the case of each voter mentioned in the long lists as we cannot hold in view of the evidence that they were absentees or were fictitious persons. There is no specific evidence also except in cases of a few persons, mentioned at pages 7 and 8 of Ext. 48. P.W. 24, Felaram Ghosh gives evidence that Bhim Beldar, Fagu Khatick, Paltu Ram and Paltu Khatty left for their native village homes at different times and he did not notice them to return again. He also says about the other person, named, Shyam Pearl Devi, mentioned in page 7 of Ext. 48, but it cannot be ascertained in whose favour her vote has recorded as the ballot paper number was not mentioned in the marked copy of the Electoral Roll by the Polling Officer.

P.W. 26, Tarak Nath De says about the three persons mentioned at page 8 of Ext. 48, namely, Bishnath, Surendra Tell and Ghalat Ahir. The evidence is similar. The witness knew those voters and he did not see them again at their Musjidbari Street addresses after they left for their village homes. At page 1 of Ext. 48, there is mention of the name of one Jagdeo Chamar, who, according to P.W. 12, Muzaffar Ahmed, and P.W. 16, Sallendra Nath Chatterjee, was dismissed from his service. There is order of his dismissal, Ext. 28, which has been produced. The fact that the three voters who left for homes and the other whose services were dispensed with were not seen again by the witness cannot prove that they did not come back to Calcutta on the day of Election and could not cast their votes.

At page 9 of Ext. 48, there are 7 cases of tendered votes. One person named Banwari Ram registered two tendered votes in favour of Nirmal Chandra De. Comparing ballot papers we find that 6 persons did cast votes in favour of Nirmal

Chandra De and another in favour of a different candidate. The tendered votes were not counted under Rule 29(2) of the Representation of the People Act (Conduct of Election and Election Petition) Rules 1951, so they may be left out of consideration. The 6 votes originally received and put in the ballot box were counted. As such votes cannot be rejected on the ground of invalidity as cast by wrong persons, the position remains unaltered.

There remains another specific case of alleged false voting in the name of a voter named Apanga Bhattacharyya. When a person came to cast vote describing himself as Apanga Bhattacharyya, the Polling Agent of the Respondent No. 8 Sudhir Chandra Roy Choudhury, P.W. 9, Madanlal Chatterjee challenged the man, depositing Rupees 10/-. His evidence is that the Congress Polling Agent identified that man as Apanga Bhattacharyya and the Presiding Officer of the Polling Station allowed that man to cast vote over-ruling his objection. In the Challenged Votes List, Ext. 29, no name of identifier has been noted by the Presiding Officer. In the Election Petition it was stated in Paragraph 10 that the Polling Agent of the Respondent Nirmal Chandra De identified that person. The name of the Polling Agent was not mentioned in the Election Petition. P.W. 9, Madan Lal Chatterjee now says that the name of that identifier was 'Bebo', son of late Jatish Chandra Bose, Attorney. In his written statement the Respondent No. 3 Nirmal Chandra De denied in paragraph 5 all knowledge that the said Apanga Bhattacharyya was not at Calcutta and false voting was recorded in his name by a completely different person. He gave no specific denial about the identification by his Polling Agent, though he traversed the allegation in general terms. In the challenged votes list, Ext. 29, there is a note in the Column with the heading, "Name of Identifier, if any", to the following effect:—"Satisfied that a *bona fide* voter by questions". Apanga Bhattacharyya is a School Teacher at Lumding in Assam. His name has also been registered in the Assam Electoral Roll. His elder brother P.W. 10 Sitalanga Bhattacharyya says that Apanga did not come to Calcutta but he was at Lumding on the date of polling. He emphatically denies the signature "Apangya Bhattacharyee" in the Challenged Vote List, which appears to have been peculiarly spelled as that of his brother Apanga Bhattacharyya. P.W. 11, Kishori Mohon Chatterjee, a respectable gentleman, learnt on enquiry while he went to Lumding after the election that Apanga Bhattacharyya was at Lumding during the election time and did not come to Calcutta then. A report, Ext. 19, of the Lumding Railway M. E. School has been produced by the witness showing that Apanga Bhattacharyya took no leave in January, 1952, and he left for Calcutta for his marriage ceremony on 14th February, 1952, taking leave for 15 days. Considering the evidence we are convinced that Apanga Bhattacharyya did not cast his vote and there was a challenged vote in his name by false personation, though it has not been possible for the Petitioner to adduce direct evidence of the said Apanga Bhattacharyya, bringing him down from Lumding which is within a different State of Assam. The evidence is however not convincing that there was identification by the Polling Agent of the Respondent No. 3 Nirmal Chandra De. The challenged votes list, Ext. 29, does not support such a case, hence, no connivance of the Respondent No. 3 Nirmal Chandra De or his agent has been established. There was accordingly a minor corrupt practice only. Therefore this vote is liable to be struck off.

The result of the decision of the Tribunal therefore is, that there had been no major corrupt practice as alleged but there were minor corrupt practices in respect of 8 votes of dead persons and one challenged vote. This Issue is thus disposed of.

6th Issue.—The decision of the Tribunal has been that under Section 100(I) (C) of the Representation of the People Act, 1951, the election of the returned candidate Nirmal Chandra De should be declared void for non-compliance with the provisions of law relating to the starting of the polling and continuing for the statutory period of 8 hours and thereby depriving opportunity to a very large number of electors allotted to many Booths, from exercising their right of franchise and further for refusal to register votes of several residuary voters at Booth No. 29B, as such non-compliance materially affected the result of the election. An election which is set aside on such grounds is according to law no election. Reference may be made in this connection to Parker's "Election Agent and Returning Officer", 5th Edition page 120, where it has been observed referring to several English decisions that "an election which has been set aside as void by a competent tribunal, is by the common law of Parliament considered in law as no election". In this view of the case it is to be deemed that there was no election.

There is a prayer in this case under Section 10(b) of the Representation of the People Act, 1951 that the Respondent No. 8, Sudhir Chandra Roy Choudhury be declared to have been duly elected on the ground that but for the votes obtained by the returned candidate, Nirmal Chandra De by corrupt or illegal practices, the

said Sudhir Chandra Roy Choudhury would have obtained a majority of the valid votes. Such declaration cannot be made when the election is found to be wholly void. Besides, the difference of votes between Nirmal Chandra De and Sudhir Chandra Roy Choudhury was counted to be 92 only. The Tribunal has already found that the petitioner has not been successful in establishing that more than 92 votes are liable to be struck off on account of corrupt or illegal practices. The evidence only justifies an inference that 9 invalid votes have been counted in favour of Nirmal Chandra De. As regards many other votes which have been questioned, the evidence has not been satisfactory and convincing. No major corrupt practice exercised by or with the connivance of the returned candidate Nirmal Chandra De or his agents could be established. The Respondent No. 8 Sudhir Chandra Roy Choudhury cannot therefore be declared to be duly elected under Section 101(b) of the Representation of the People Act, 1951.

The non-compliance of the provisions of law affects equally all the candidates. As the Tribunal is of opinion that there has not been any valid election according to law, the whole election becomes void.

7th Issue.—The Petitioner has succeeded in establishing that the election was void. He is practically a 'Benamdar' of the Respondent No. 8 Sudhir Chandra Roy Choudhury. No major corrupt practice, exercised by or with the connivance of the Respondent No. 3 Nirmal Chandra De or his agent has been established.

There remains for consideration the question of cost. The election is being set aside for no fault of the returned candidate, Nirmal Chandra De. He cannot therefore be saddled with any cost of this case. Besides, numerous objections were raised by the Petitioner but some were abandoned after protracted trial at the time of arguments. The Petitioner further failed to establish his allegations of corrupt and illegal practices exercised by or with the connivance of the said Nirmal Chandra De or his agents. In the circumstances each party is left to bear his own cost.

ORDER

It is hereby ordered by the Tribunal that the election petition be allowed and the election of Burtolla Assembly Constituency in the State of West Bengal, held on 22nd January, 1952, be declared void. The parties are directed to bear their own costs.

Dictated by me and corrected.

(Sd.) S. C. RAY CHAUDHURI, *Chairman.*

Election Tribunal.

(Sd.) S. C. RAY CHAUDHURI, *Chairman.*

Election Tribunal.

(Sd.) M. N. GAN, *Member,*

Election Tribunal.

(Sd.) SUDHIR KUMAR BOSE, *Member,*

Election Tribunal.

The 7th February, 1953.

[No. 19/119/52-Elec.III.]

P. S. SUBRAMANIAN,
Officer on Special Duty.

